

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF OHIO
3 WESTERN DIVISION

4 * * *

5 HOBART CORPORATION, et al.,

6 Plaintiffs,

7 vs. CASE NO. 3:13-cv-00115-WHR

8 THE DAYTON POWER AND

9 LIGHT COMPANY, et al.,

10 Defendants.

11 * * *

12 Deposition of HORACE J. BOESCH, JR.,
13 Witness herein, called by the Plaintiffs for
14 direct examination pursuant to the Rules of Civil
15 Procedure, taken before me, Michelle A. Elam, a
16 Notary Public in and for the State of Ohio, at the
17 offices of Sebaly, Shillito + Dyer, 1900 Kettering
18 Tower, 40 North Main Street, Dayton, Ohio, on
19 Thursday, the 23rd day of October, 2014, at 9:03
20 a.m.

21 * * *

1	EXAMINATIONS CONDUCTED	PAGE
2	BY MR. SILVER:	10
3	BY MS. KAUFMAN:	82
4	BY MR. HAUGHEY:	87
5	BY MR. HARBECK:	104
6	BY MR. ANDREASEN:	115
7	BY MS. WRIGHT:	120
8	BY MR. HAUGHEY:	122
9	BY MR. SILVER:	124
10	BY MS. KAUFMAN:	129
11	BY MR. HAUGHEY:	130
12	BY MR. CAMPBELL:	132
13	EXHIBITS MARKED	PAGE
14	(Thereupon, Boesch Exhibit Number 1	59
15	was marked for purposes of	
16	identification.)	
17	(Thereupon, Boesch Exhibit Number 2	102
18	was marked for purposes of	
19	identification.)	
20	(Thereupon, Boesch Exhibit Number 3	102
21	was marked for purposes of	
22	identification.)	
23	(Thereupon, Boesch Exhibit Number 4	104
24	was marked for purposes of	
25	identification.)	

1 APPEARANCES:

2 On behalf of the Plaintiffs:

3 Langsam Stevens Silver & Hollaender

4 By: Larry Silver
Attorney at Law
5 1818 Market Street, Suite 3400
Philadelphia, Pennsylvania 19103
6 215-732-3255

7 On behalf of the Defendant Cox Media Group
Ohio, Inc.:

8 Faruki Ireland & Cox, P.L.L.

9 By: Erin E. Rhinehart
10 Attorney at Law
500 Courthouse Plaza, SW
11 10 North Ludlow Street
Dayton, Ohio 45402
12 937-227-3719

13 On behalf of the Defendant Franklin Iron &
14 Metal Corporation:

15 Crehan & Thumann, LLC

16 By: Robert J. Thumann
Attorney at Law
1206 Race Street
17 Cincinnati, Ohio 45202
513-381-5050

18 On behalf of the Defendant Pharmacia, LLC, a
19 Delaware Limited Liability Company:

20 Krieg DeVault, LLP

21 By: Vicki J. Wright
Kay Dee Baird
22 Attorneys at Law
One Indiana Square, Suite 2800
23 Indianapolis, Indiana 46204
317-238-6372

24

25

1 APPEARANCES: (Cont'd.)

2 On behalf of the Defendant Sherwin-Williams
3 Company:

4 Gallagher Sharp

5 By: Robert H. Eddy (Telephonically)
6 Attorney at Law
7 420 Madison Avenue, Suite 1250
8 Toledo, Ohio 43604
9 419-241-4863

10 On behalf of the Defendant Waste Management of
11 Ohio, Inc.:

12 Quarles & Brady

13 By: William H. Harbeck
14 Attorney at Law
15 411 East Wisconsin Avenue
16 Milwaukee, Wisconsin 53202-4497
17 414-277-5000

18 On behalf of the Defendant Kimberly Clark
19 Corporation:

20 Foley Lardner LLP

21 By: Sara H. Slack
22 Attorney at Law
23 150 East Gilman Street
24 Suite 5000
25 Madison, Wisconsin 53703
608-258-4239

On behalf of the Defendant P-Americas, LLC:

Morgan, Lewis & Bockius

By: W. Brad Nes (Telephonically)
Attorney at Law
1111 Pennsylvania Avenue, NW
Washington, DC 20004
202-739-5779

1 APPEARANCES: (Cont'd.)

2 On behalf of the Defendant The Dayton Power
and Light Company:

3 Bricker & Eckler

4 By: Drew H. Campbell
5 Attorney at Law
100 South Third Street
6 Columbus, Ohio 43215
614-227-2300

7 On behalf of the Defendant Bridgestone
8 Americas Tire Operations, LLC:

9 Wactor & Wick LLP

10 By: Anna L. Nguyen (Telephonically)
11 Attorney at Law
180 Grand Avenue
Suite 950
12 Oakland, California 94612
510-465-5750

13 On behalf of the Defendant Dayton Board of
14 Education:

15 Subashi & Wildermuth

16 By: Andrew E. Rudloff
17 Attorney at Law
The Greene Town Center
50 Chestnut Street, Suite 230
18 Dayton, Ohio 45440
937-427-8800

19 On behalf of the Defendant Day International,
20 Inc.:

21 McDonald Hopkins LLC

22 By: Theodore J. Esborn (Telephonically)
23 Attorney at Law
600 Superior Avenue, East
Suite 2100
24 Cleveland, Ohio 44114
216-348-6400

25

1 APPEARANCES: (Cont'd.)

2 On behalf of the Defendant Reynolds &
3 Reynolds:

4 Bingham McCutchen LLP

5 By: Duke K. McCall, III
6 Attorney at Law
7 2020 K Street, NW
8 Washington, DC 20006-1806
9 202-373-6607

10 On behalf of the Defendants Flowserve, The
11 University of Dayton, and Standard Register:

12 Frost Brown Todd LLC

13 By: Stephen N. Haughey
14 Attorney at Law
15 3300 Great American Tower
16 301 East Fourth Street
17 Cincinnati, Ohio 45202
18 513-651-6127

19 On behalf of the Defendant Coca-Cola
20 Refreshments, USA, Inc.:

21 Ballard Spahr LLP

22 By: Jennifer Drust (Telephonically)
23 Attorney at Law
24 999 Peachtree Street
25 Suite 1000
Atlanta, Georgia 30309-3915
678-420-9300

On behalf of the Defendant PPG Industries,
Inc.:

Dickie, McCamey & Chilcote, P.C.

By: Peter T. Stinson (Telephonically)
Attorney at Law
Two PPG Place
Suite 400
Pittsburgh, Pennsylvania 15222-5402
412-281-7272

1 APPEARANCES (Cont'd.)

2 On behalf of the Defendant ConAgra Grocery
3 Products Company:

4 McGrath North

5 By: John A. Andreasen
6 Attorney at Law
7 First National Tower
8 Suite 3700
9 1601 Dodge Street
10 Omaha, Nebraska 68102
11 402-341-3070

12 On behalf of the Defendant Ohio Bell Telephone
13 Company:

14 Beveridge & Diamond PC

15 By: James B. Slaughter (Telephonically)
16 Attorney at Law
17 1350 I Street, NW
18 Suite 700
19 Washington, DC 20005-3311
20 202-789-6000

21 On behalf of the Defendant DAP Products, Inc.:

22 Calfee, Halter & Griswold LLP

23 By: William E. Coughlin (Telephonically)
24 Attorney at Law
25 The Calfee Building
1405 East Sixty Street
Cleveland, Ohio 44114-1607
216-622-8334

On behalf of the Defendant Valley Asphalt
Corporation:

Tucker Ellis LLP

By: Martin H. Lewis (Telephonically)
Attorney at Law
950 Main Avenue
Suite 1100
Cleveland, Ohio 44113
216-696-5657

1 APPEARANCES: (Cont'd.)

2 On behalf of the Defendant Van Dyne Crotty
3 Company:

4 Steptoe & Johnson

5 By: Kathy Milenkovski (Telephonically)
6 Attorney at Law
7 41 South High Street
8 Suite 2200
9 Columbus, Ohio 43215
10 614-221-5100

11 On behalf of the Defendants Bradford Soap
12 International, Inc., Cargill, Inc., and Hewitt
13 Soap Works, Inc., Newmark, LLC:

14 Van Kley & Walker, LLC

15 By: Jack Allen Van Kley (Telephonically)
16 Attorney at Law
17 132 Northwoods Boulevard
18 Suite C-1
19 Columbus, Ohio 43235
20 614-431-8900

21 On behalf of the Defendant Peerless
22 Transportation:

23 Rendigs, Fry, Kiely & Dennis, LLP

24 By: W. Roger Fry
25 Attorney at Law
600 Vine Street
Suite 2650
Cincinnati, Ohio 45202
513-381-9288

On behalf of the Defendant The City of
Dayton:

The City of Dayton Law Department

By: John C. Musto
Assistant City Attorney
101 West Third Street
P.O. Box 22
Dayton, Ohio 45402

1 APPEARANCES: (Cont'd.)

2 On behalf of the Defendant Harris Corporation:

3 Holland & Knight LLP

4 By: Bonni F. Kaufman
5 Attorney at Law
6 800 17th Street, NW
7 Suite 1100
8 Washington, DC 20006
9 202-419-2547

10 On behalf of the Witness Horace J. Boesch, Jr.:

11 Dinsmore & Shohl LLP

12 By: Timothy D. Hoffman
13 Attorney at Law
14 1100 Courthouse Plaza, SW
15 10 North Ludlow Street
16 Dayton, Ohio 45202
17 937-449-2800

18 ALSO PRESENT:

19 Scott Arentsen, DP&L

20 * * *

21

22

23

24

25

1 HORACE J. BOESCH, JR.
2 of lawful age, Witness herein, having been first
3 duly cautioned and sworn, as hereinafter
4 certified, was examined and said as follows:

5 DIRECT EXAMINATION

09:03:44 6 BY MR. SILVER:

09:03:44 7 Q. Mr. Boesch, can you state your
09:03:47 8 full name for the record?

09:03:48 9 A. Yes. My name is Horace J. Boesch,
09:03:53 10 Jr.

09:03:53 11 Q. And are you sometimes known as
09:03:54 12 Jack?

09:03:55 13 A. Yes. Yes.

09:03:56 14 Q. May I call you Jack?

09:03:58 15 A. Yes. You sure may. Everybody
09:04:00 16 that knows me calls me that.

09:04:01 17 Q. My name is Larry Silver.

09:04:04 18 A. Yes, sir.

09:04:04 19 Q. And I'm an attorney in some
09:04:06 20 litigation involving the South Dayton Dump --

09:04:10 21 A. Yes, sir.

09:04:11 22 Q. -- & Landfill. I represent three
09:04:14 23 companies in the litigation, the Plaintiffs in
09:04:16 24 the litigation, NCR Corporation, Hobart, and
09:04:19 25 Kelsey-Hays.

09:04:22 1 And we're here to talk about your
09:04:27 2 experiences with the South Dayton Dump and get
09:04:31 3 some information on that. You've been deposed at
09:04:35 4 least two times before?

09:04:36 5 A. Two times. Yes.

09:04:38 6 Q. In 2006 by the EPA?

09:04:40 7 A. Yes.

09:04:41 8 Q. Do you remember that?

09:04:42 9 A. Yes, sir.

09:04:42 10 Q. And also in 2011 by other
09:04:46 11 attorneys for the Plaintiffs in this --

09:04:48 12 A. Yes.

09:04:49 13 Q. -- in a prior version of this
09:04:51 14 litigation?

09:04:52 15 A. That's correct.

09:04:52 16 Q. Okay. We are sorry to have to
09:04:55 17 bring you back. The reason for bringing you
09:04:57 18 back a third time is that there are new parties
09:05:01 19 in the case that weren't -- were not in the
09:05:07 20 case that the prior deposition in 2011 was part
09:05:13 21 of, and I needed to give the new attorneys a
09:05:16 22 chance to hear what you had to say and question
09:05:19 23 you.

09:05:20 24 A. Okay.

09:05:21 25 Q. So what I'm going to do -- have

09:05:23 1 you had other depositions in addition to those
09:05:26 2 two about any subject?

09:05:27 3 A. Not really. Well, several years
09:05:33 4 ago, we had -- I was a partner in a company
09:05:37 5 called Coldwell Banker Heritage Realtors, and
09:05:40 6 we had sold a house out in Beavercreek that had
09:05:46 7 sand underlying it that we had to go to court
09:05:47 8 and defend. We ended up buying the house back.
09:05:50 9 We never owned the house, but we sold it. A
09:05:53 10 man from the field that had been in Iraq or
09:05:56 11 some place didn't like sand under his house.
09:05:58 12 It never moved or anything. But Gem City
09:06:00 13 Savings had a mortgage on it, but I had to give
09:06:03 14 testimony in regard to that whole thing. I
09:06:07 15 ended up -- finally, we settled it.

09:06:08 16 Q. Was that testimony in court?

09:06:10 17 A. Yes.

09:06:10 18 Q. And I'll just remind you, just a
09:06:12 19 couple of instructions on depositions to
09:06:15 20 refresh your memory.

09:06:16 21 I'm going to ask you a series of
09:06:18 22 questions. Then I'm going to give you a chance to
09:06:20 23 answer each question. It's important that you
09:06:23 24 listen carefully to the question, answer it to the
09:06:27 25 best of your ability, but answer what you know,

09:06:30 1 don't speculate. If you don't understand the
09:06:32 2 question, just let me know immediately and I will
09:06:36 3 rephrase it. If you don't hear me, you mentioned
09:06:38 4 that you have a little bit of a hearing issue.

09:06:41 5 A. Yeah. That's what my wife says.

09:06:43 6 Q. That's not the kind of hearing
09:06:46 7 issue I had in mind, but I understand. So if
09:06:54 8 you can't hear my question, just ask me to
09:06:58 9 repeat it and I will be happy to do so.

09:07:00 10 A. Yes, sir.

09:07:00 11 Q. The other important thing for the
09:07:04 12 court reporter's benefit, it's very important
09:07:05 13 that we don't talk over each other. She will
09:07:05 14 have a lot of difficulty getting everything
09:07:09 15 down. So please wait until I finish my
09:07:12 16 question before you begin your answer, and I'll
09:07:13 17 try not to interrupt your answer with the next
09:07:16 18 question.

09:07:17 19 If you need a break at any time,
09:07:19 20 let me know or let your attorney, Tim, know.

09:07:23 21 A. Yes, sir.

09:07:23 22 Q. All right. Your birth date?

09:07:26 23 A. 2-2-32.

09:07:28 24 Q. And I take it you're still
09:07:31 25 gainfully employed?

09:07:32 1 A. Well, when I want to be. That's
09:07:35 2 about it. I do do a little work, yes. Not
09:07:40 3 much. But some old clients that I handle some
09:07:44 4 buildings for.

09:07:44 5 I went with a friend of mine as a
09:07:48 6 commercial broker. That's where I started out.
09:07:50 7 And I ended up in residential because some other
09:07:53 8 friends of mine started this residential company.
09:07:56 9 And I was with them for forty years. So --

09:07:58 10 Q. That would be Heritage?

09:07:59 11 A. Heritage. Uh-huh. Coldwell --

09:08:01 12 Q. And you're still working in
09:08:03 13 association with Heritage now?

09:08:03 14 A. No. No. I -- we sold the company
09:08:05 15 in 2001, and I stayed on till -- I guess it was
09:08:08 16 two years ago. Then I went with Mark. I was
09:08:11 17 just -- they didn't want me to do a lot of
09:08:13 18 commercial business so I just said well, forget
09:08:16 19 it then. That was where I really started out.
09:08:19 20 So I went with Mark.

09:08:20 21 Q. So you started out in commercial,
09:08:22 22 but now at the current time you're doing
09:08:25 23 residential real estate?

09:08:26 24 A. No. I'm back to commercial.

09:08:26 25 Q. Okay.

09:08:28 1 A. I stay away -- in fact, I gave a
09:08:30 2 couple listings to a couple agents at Coldwell
09:08:37 3 Banker Heritage just the other week. I don't
09:08:37 4 touch the residential anymore.

09:08:40 5 Q. You were born in Dayton, the
09:08:42 6 Dayton area?

09:08:44 7 A. In Columbus, actually.

09:08:45 8 Q. In Columbus, Ohio?

09:08:46 9 A. Yes, sir.

09:08:46 10 Q. And tell me about your family.
09:08:48 11 Your father's name was also Horace?

09:08:51 12 A. Horace, yes. Horace J. Boesch.
09:08:55 13 Yes, sir.

09:08:55 14 Q. And your father was in what
09:08:57 15 business?

09:08:58 16 A. He was an attorney, and he was a
09:09:00 17 frustrated builder. He built buildings on the
09:09:05 18 weekend. And they started that dump down
09:09:07 19 there, little gravel pit.

09:09:08 20 Q. Now, your mother -- your father
09:09:11 21 passed away in 1979?

09:09:13 22 A. '79. My mother passed away in
09:09:15 23 1972.

09:09:16 24 Q. And I saw in the prior transcript
09:09:19 25 a reference to your stepmother?

09:09:20 1 A. Yes. Kathryn Boesch. Yes, sir.

09:09:23 2 Q. Did she pass away recently?

09:09:25 3 A. March.

09:09:26 4 Q. Now, siblings, do you have any --

09:09:26 5 A. I have --

09:09:32 6 Q. -- brothers and sisters?

09:09:32 7 A. My brother died in '9 -- in '87 --

09:09:39 8 '86. His --

09:09:39 9 Q. Go ahead. I'm sorry.

09:09:41 10 A. His widow and my two younger

09:09:46 11 sisters are along with me and involved in the

09:09:49 12 dump. Yes.

09:09:49 13 Q. All right. And your brother who

09:09:51 14 dies was a younger brother?

09:09:52 15 A. Yes. Younger brother. Yes.

09:09:53 16 Q. And I remember reading in one of

09:09:54 17 the transcripts that he used to pick with you

09:09:56 18 at the dump back in the day?

09:09:57 19 A. Well, back when I was going to UD,

09:10:00 20 it was during the Korean War -- or the Korean

09:10:04 21 police action. Pardon me. And we used to go

09:10:08 22 over there and they -- they mine some scrap

09:10:11 23 iron that was in the ground. They went back --

09:10:14 24 there was a company that leased off of us,

09:10:17 25 Broadway Sand & Gravel and they used their

09:10:20 1 trucks and their steam shovel to dig up some
09:10:26 2 old areas of the north end of the bridge there
09:10:29 3 where there was another company there years
09:10:30 4 ago, back in the '20s, Charlie Cinn's dump, and
09:10:34 5 so they mined that and got the scrap out.

09:10:36 6 They had a machine. I'll tell you,
09:10:38 7 they got into all kinds of machine. They had a
09:10:42 8 machine that was a hopper and they dumped this
09:10:44 9 stuff in this hopper and underneath it was a
09:10:46 10 conveyor belt and it come out on this conveyor
09:10:47 11 belt over a bank and then they had a magnetic
09:10:51 12 conveyor belt that overlapped it, it would pick up
09:10:53 13 all the metal and all the -- off-ball the trash
09:10:56 14 and stuff, would go down into a big old dump truck
09:10:58 15 and they'd dump it back in and then they took the
09:11:01 16 scrap and sold it.

09:11:02 17 And my brother and I used to work on
09:11:04 18 that conveyor when we were going to school. We'd
09:11:07 19 work on the weekends. And the conveyor belt, the
09:11:10 20 magnetic conveyor belt, would not pick up brass so
09:11:12 21 we'd pick the brass off. For some reason, it
09:11:16 22 wouldn't pick it up.

09:11:17 23 Q. This was Broadway Sand & Gravel's
09:11:19 24 conveyor?

09:11:20 25 A. Well, it was the South Dayton

09:11:22 1 Dump. It was all there together. The dump
09:11:23 2 originated because of the gravel pit. Then
09:11:25 3 the South Dayton -- or Broadway Sand & Gravel
09:11:29 4 took the gravel out of the ground and they had
09:11:31 5 a hole and filled it up. They started a dump
09:11:34 6 and filled it up.

09:11:35 7 Q. And do you know who owned Broadway
09:11:37 8 Sand & Gravel?

09:11:37 9 A. A fellow by the name of Bill
09:11:40 10 Jones.

09:11:40 11 Q. And that company is still around?

09:11:42 12 A. Well, it's still around, but it's
09:11:44 13 not the same owner. It's changed hands. A
09:11:47 14 Larry Cornett owned it and he died. And
09:11:50 15 there's some litigation -- I guess his estate,
09:11:52 16 from what they tell me, has been open for about
09:11:53 17 eight years. I don't know what they're doing
09:11:55 18 with that. They're over on the other side of
09:11:58 19 Interstate 75, up on the hillside there. If
09:12:01 20 you come up that way, you can see them there.
09:12:04 21 They're up there where Weiler just built a new
09:12:07 22 building. And CompuNet is up there in some
09:12:09 23 gray buildings. And they're beyond them.
09:12:12 24 They're the last tract up there before you get
09:12:14 25 to the river.

09:12:15 1 Q. Okay. Now, you mentioned a couple
09:12:18 2 of younger sisters, did you say?

09:12:19 3 A. Yes.

09:12:19 4 Q. Did they ever do any picking at
09:12:21 5 the dump?

09:12:22 6 A. No. No. They wouldn't go near
09:12:24 7 it.

09:12:24 8 Q. And then you had an Uncle Bob who
09:12:27 9 was a lawyer?

09:12:28 10 A. Yes.

09:12:28 11 Q. Has he passed away?

09:12:30 12 A. Yes. And Uncle Charles that was a
09:12:33 13 lawyer, too.

09:12:34 14 Q. Yeah. I remember you saying there
09:12:36 15 were five lawyers in the family?

09:12:38 16 A. Yeah.

09:12:38 17 Q. All right. I'm going to go
09:12:40 18 quickly through your -- you testified about
09:12:44 19 your school history, schooling history, and job
09:12:47 20 history, but I just want to get it for the
09:12:50 21 record for --

09:12:51 22 A. Okay.

09:12:51 23 Q. -- for this deposition. So I'll
09:12:53 24 try to do it as quickly as possible. You went
09:12:56 25 to grade school in Dayton?

09:12:58 1 A. Until the fifth grade. Yeah.
09:13:04 2 Holy Angels. Then the World War -- my uncles
09:13:08 3 were young and they were in the Reserves and
09:13:08 4 the --

09:13:11 5 MS. KAUFMAN: I'm so sorry, I
09:13:13 6 couldn't hear. Did you say you went to grade
09:13:13 7 school until fifth grade or what --

09:13:17 8 THE WITNESS: Yeah. I went to Holy
09:13:19 9 Angels till the fifth grade on Brown Street here
09:13:22 10 in Dayton. And then I used to -- instead of going
09:13:23 11 home, I'd go over and play tag football at the old
09:13:28 12 Patterson Estate and my mother couldn't come after
09:13:29 13 me because she had the younger kids so my dad said
09:13:31 14 I'll put you someplace where I can find you. So
09:13:33 15 he put me in a boarding school in Fayetteville,
09:13:38 16 Ohio, St. Aloysius Military Academy, down there.
09:13:38 17 It's no longer in existence. Fayetteville is a
09:13:43 18 town below Dayton here about -- well, it's just
09:13:45 19 south of Wilmington.

09:13:46 20 Q. So you were there for what, three
09:13:48 21 years?

09:13:49 22 A. Eight years. Till the eighth
09:13:51 23 grade.

09:13:51 24 Q. Oh, okay. Well, fifth grade
09:13:51 25 until --

09:13:51 1 A. The eighth grade. I graduated
09:13:52 2 from grade school down there. I finished grade
09:13:54 3 school.

09:13:54 4 Q. But in the eighth grade. So you
09:13:58 5 were there six through eight?

09:13:59 6 A. Right.

09:13:59 7 Q. Is that right?

09:14:00 8 A. That's correct.

09:14:00 9 Q. Then you started high school at
09:14:02 10 Chaminade?

09:14:02 11 A. Chaminade. Right.

09:14:03 12 Q. And you went through Chaminade
09:14:05 13 through your junior year?

09:14:07 14 A. Yes. That's correct.

09:14:08 15 Q. And then you went to a boarding
09:14:10 16 school in Georgia?

09:14:11 17 A. Yes. Georgia Military College.
09:14:13 18 It was a junior college and a prep school.

09:14:15 19 Q. And you graduated from the
09:14:17 20 military college in Georgia --

09:14:20 21 A. '49.

09:14:21 22 Q. -- in 1949?

09:14:22 23 A. Yes.

09:14:22 24 Q. And I think you mentioned that you
09:14:26 25 worked on the county road crew --

09:14:28 1 A. Yes.

09:14:29 2 Q. -- during your high school and
09:14:31 3 college years?

09:14:32 4 A. During the summertime. Yes, sir.

09:14:34 5 Q. I had that same job up in
09:14:36 6 Cleveland.

09:14:36 7 A. Oh, yeah. I was on the tar crew.
09:14:39 8 That was the dirtiest job.

09:14:41 9 Q. You mean you just did tar work?

09:14:42 10 A. Huh?

09:14:44 11 Q. You just did the tar work on the
09:14:46 12 road crew?

09:14:46 13 A. Oh, yeah.

09:14:47 14 Q. You didn't pick up the dead dogs
09:14:49 15 and the --

09:14:49 16 A. No, I didn't do that. We traveled
09:14:51 17 the whole county, we'd resurface the roads
09:14:53 18 that -- you know, they'd do the sides of the
09:14:54 19 road, sometimes the center, and then we put
09:14:56 20 gravel on them and roll them. I was on that
09:14:59 21 crew all the time.

09:14:59 22 Q. That was a summer job?

09:15:01 23 A. Summer job.

09:15:01 24 Q. So each summer in high school and
09:15:04 25 college, you would do that?

09:15:05 1 A. Yeah.

09:15:05 2 Q. And that was a weekday job, I take
09:15:08 3 it?

09:15:08 4 A. Five days a week. Yes, sir.

09:15:10 5 Q. All right. You picked up some
09:15:12 6 spending money with that?

09:15:13 7 A. Oh, yeah.

09:15:14 8 Q. So you testified in the 2011
09:15:18 9 deposition that you did that job from --
09:15:20 10 summers from '47 to '54?

09:15:22 11 A. Yes. That's correct.

09:15:24 12 Q. And after that, after high school,
09:15:33 13 after graduation from the Georgia prep school,
09:15:36 14 you went to the -- you spent a year at Georgia
09:15:40 15 Tech?

09:15:40 16 A. Yes. That's correct.

09:15:41 17 Q. What year would that have been?

09:15:43 18 A. That was '49 to '50.

09:15:46 19 Q. And left Georgia Tech and then
09:15:49 20 came up to --

09:15:50 21 A. Came up to UD. Yes, sir.

09:15:51 22 Q. And entered what, as a sophomore,
09:15:55 23 whatever credits you had?

09:15:56 24 A. Well, I was -- I still had -- they
09:15:58 25 were on the quarter system, and I didn't have

09:16:00 1 enough credits to move into my sophomore year
09:16:04 2 completely so I had to take about a semester as
09:16:08 3 a freshman and then update it.

09:16:11 4 Q. And where did you live during your
09:16:11 5 college years?

09:16:11 6 A. I lived at 2744 Fairmont Avenue.
09:16:14 7 I lived at home.

09:16:15 8 Q. And then after graduating from
09:16:19 9 college in 1954 --

09:16:20 10 A. Yes. That's correct.

09:16:21 11 Q. -- you -- it looks like the Army
09:16:26 12 came calling?

09:16:27 13 A. Yep.

09:16:28 14 Q. And you got drafted?

09:16:30 15 A. Yes.

09:16:30 16 Q. And you were stationed in Germany,
09:16:32 17 was it?

09:16:32 18 A. Yes. That's correct. Well, Fort
09:16:35 19 Ord, California and Presidio of Monteray and
09:16:38 20 then Germany. Yes, sir.

09:16:39 21 Q. And in the Army from -- if I
09:16:41 22 remember your deposition testimony, October,
09:16:44 23 1954?

09:16:45 24 A. Yes, sir.

09:16:46 25 Q. And discharged September, 1956?

09:16:48 1 A. That is correct.

09:16:50 2 Q. You also made mention that you had
09:16:57 3 some odd jobs in college including bartending?

09:17:00 4 A. Oh, yeah. I tended bar up at
09:17:06 5 Kremer's. I was a college hand.

09:17:06 6 Q. And then after --

09:17:06 7 UNIDENTIFIED SPEAKER: Larry, the
09:17:08 8 witness is breaking up. We can't hear him on the
09:17:10 9 phone. Can you move it a little closer, the
09:17:13 10 microphone to him?

09:17:15 11 MR. SILVER: We'll try. Okay. Let
09:17:19 12 us know.

09:17:22 13 Q. After -- after the Army, you came
09:17:23 14 back to Dayton?

09:17:24 15 A. Yes. That's correct. Then I went
09:17:25 16 to Ohio Northern for a year.

09:17:27 17 Q. Law school?

09:17:28 18 A. Yeah. I gave it a try, but it
09:17:30 19 wasn't my cup of tea.

09:17:32 20 Q. There in Ada, Ohio?

09:17:35 21 A. Ada, Ohio. Yes, sir.

09:17:38 22 Q. And so that would have been in
09:17:41 23 19 --

09:17:42 24 A. '56, '57.

09:17:43 25 Q. Starting in September, '5 --

09:17:46 1 September, '56 and then finishing up in May or
09:17:49 2 so of '57?

09:17:50 3 A. Yeah.

09:17:51 4 Q. Then came back here?

09:17:54 5 A. Came back home. Yes, sir.

09:17:56 6 Q. What did you do when you got back
09:17:58 7 home?

09:17:58 8 A. I used to clerk auctions for an
09:18:00 9 auctioneer when I was in high school sometimes
09:18:03 10 and in college. And then I got a real estate
09:18:07 11 license. He was a real estate broker besides
09:18:12 12 an auctioneer. Forrest Martin was his name.
09:18:14 13 They were out in Centerville. Martin & Martin.
09:18:14 14 And I'd clerk auctions and I'd sell a little
09:18:17 15 real estate. I was working my way into that.
09:18:19 16 He was primarily in the auction business.

09:18:23 17 And then I went with a fellow by the
09:18:25 18 name of Bill Gilmore for about a year and did --
09:18:28 19 started my commercial industrial. Then I went by
09:18:31 20 myself and had my own business.

09:18:35 21 Q. So you started with a fellow name
09:18:37 22 Bill Gilmore when you came back to Dayton?

09:18:39 23 A. When I went into real estate
09:18:41 24 full-time. Yes, sir. I was just
09:18:43 25 auctioneering. I was clerking for the

09:18:45 1 auctioneer, trying to sell real estate, too,
09:18:47 2 but I wasn't doing too good at either one. I
09:18:47 3 was doing okay at clerking but wasn't too good
09:18:52 4 at selling real estate so I went with a realtor
09:18:53 5 full-time, you know, a full-time realtor.

09:18:56 6 Q. Do you remember what year and
09:18:58 7 month you got your real estate license?

09:19:00 8 A. I got my license in -- I think I
09:19:05 9 got it in '57 when I came out of Ohio Northern
09:19:11 10 when I went with the auctioneer.

09:19:12 11 Q. You mentioned that you worked with
09:19:17 12 a couple of fellows, Larry Stein, Stan Heiberg.
09:19:24 13 Did I get that right? Larry Stein in real
09:19:27 14 estate, you worked with a fellow in --

09:19:29 15 A. Well, I just had a couple
09:19:31 16 transactions. I didn't work for him. Larry
09:19:33 17 and I used to work together. Well, we'd work
09:19:36 18 sometimes -- we'd find we were working on the
09:19:39 19 same things so we'd just work together and get
09:19:41 20 it done, you know, instead of arguing with each
09:19:44 21 other and fighting and getting in trouble.

09:19:46 22 Q. You also mentioned you worked out
09:19:49 23 of the Reibold building --

09:19:50 24 A. Reibold building.

09:19:52 25 Q. -- in downtown Dayton?

09:19:54 1 A. Yes.

09:19:54 2 Q. And that was for how long?

09:19:55 3 A. Well, I was down there -- well, my
09:19:58 4 dad -- I was -- I got -- I shared an office
09:19:59 5 with my father, one of his offices there, and I
09:20:03 6 left -- we left there in '60.

09:20:06 7 He built a wing on one of the
09:20:08 8 buildings going into the dump down there for an
09:20:10 9 office. He and his partner, Mr. Grillot.

09:20:10 10 Q. Right.

09:20:13 11 A. And they built a wing down there
09:20:14 12 and they had four offices and I used one of
09:20:17 13 theirs.

09:20:17 14 Q. So you moved from the Reibold
09:20:19 15 building -- did I say that right?

09:20:24 16 A. Reibold building.

09:20:25 17 Q. Reibold building. Over to -- I
09:20:26 18 guess, at that point, was it called South
09:20:28 19 Broadway?

09:20:29 20 A. South Broadway then, yes.

09:20:30 21 Q. Right at the dump?

09:20:31 22 A. Right. Yeah. Right as you go --
09:20:33 23 the main entrance to the dump went right by my
09:20:37 24 office there.

09:20:37 25 Q. And your dad, you said and what,

09:20:42 1 Cyril Grillot --

09:20:42 2 A. Yes. That's correct.

09:20:43 3 Q. -- built an addition to an
09:20:45 4 industrial building?

09:20:46 5 A. Yeah. They added a wing on the
09:20:48 6 industrial building. Well, they added two
09:20:53 7 wings, one on each side. The company that
09:20:54 8 leased the other -- leased part of that main
09:20:56 9 industrial building wanted an office so they
09:20:57 10 built that over there.

09:20:58 11 Q. And who occupied the offices, the
09:21:01 12 four offices, one of which you moved into?

09:21:04 13 A. Well, there was Mr. Grillot, Cyril
09:21:07 14 Grillot, my father, and then I had a couple of
09:21:10 15 fellows that worked for me. They just had
09:21:13 16 their license with me, Pat Maloney and Lou
09:21:17 17 Solvary. They were building homes on scattered
09:21:20 18 lots.

09:21:20 19 Q. Right. Lou Solvary, is he still
09:21:21 20 alive?

09:21:22 21 A. No. He's deceased.

09:21:23 22 Q. What about Pat Maloney?

09:21:25 23 A. Pat Maloney is still alive. He's
09:21:27 24 up in Troy.

09:21:29 25 Q. And how long did Pat work at the

09:21:31 1 office on South Broadway?

09:21:32 2 A. He really didn't spend a lot of
09:21:34 3 time there. They just -- Lou needed a place
09:21:36 4 for really a mail drop and I said we had this
09:21:39 5 spare office and I said you can use it. They
09:21:41 6 both had real estate licenses, but -- and I
09:21:44 7 held their license for them -- but Pat just
09:21:46 8 handled the sales of Lou's houses. Most of the
09:21:49 9 time they were out looking for scattered lots.
09:21:52 10 They started building out in Drexel even.
09:21:56 11 They'd build package homes. They stayed about
09:21:58 12 a year and a half maybe, but they weren't in
09:22:03 13 the office a lot.

09:22:03 14 Q. A year and a half in that office
09:22:05 15 next to where you were?

09:22:06 16 A. Yeah. They used it about a year
09:22:09 17 and a half and then they moved.

09:22:10 18 Q. Okay. And you worked out of that
09:22:12 19 office at the entrance to the dump from 1960 to
09:22:18 20 1966; is that right?

09:22:20 21 A. Yes. That's correct.

09:22:21 22 Q. And then after that, you moved to
09:22:27 23 Bellbrook?

09:22:27 24 A. Yes. That's correct.

09:22:28 25 Q. And who were you working for in

09:22:30 1 Bellbrook?

09:22:30 2 A. Myself.

09:22:31 3 Q. Why did you make the move from
09:22:33 4 South Broadway to Bellbrook?

09:22:35 5 A. Well, I lived on a farm out in
09:22:37 6 Sugarcreek Township, and I bought a building
09:22:39 7 down in Bellbrook. It was a lot closer than
09:22:42 8 South Broadway, I'll tell you. So I just
09:22:44 9 worked down there.

09:22:45 10 Q. And I remember you saying you
09:22:47 11 bought a farm pretty -- pretty what, around
09:22:50 12 when you were --

09:22:51 13 A. '59.

09:22:52 14 Q. Oh, in '59?

09:22:53 15 A. Yeah. Bought it in December of
09:22:55 16 '59.

09:22:55 17 Q. And then you stayed with -- stayed
09:22:58 18 in Bellbrook until '73 or so?

09:23:01 19 A. Yes. That's correct. And then I
09:23:02 20 went with Heritage. I knew the fellows that
09:23:05 21 started Heritage. I went to high school with a
09:23:07 22 couple of them at Chaminade.

09:23:08 23 Q. And that pretty much brings us up
09:23:13 24 to date or until --

09:23:14 25 A. Yeah. I was --

09:23:14 1 Q. -- at least until you said 2002?

09:23:14 2 A. Yeah.

09:23:15 3 Q. And then did some work with them
09:23:17 4 for a few more years after, was it?

09:23:20 5 A. Oh, I stayed with Heritage until
09:23:23 6 2011. We sold it in 2001, but I stayed. One
09:23:27 7 of our younger partners bought it. And the
09:23:29 8 manager who used to be with Norwest Mortgage,
09:23:33 9 they bought it from us and I stayed. A couple
09:23:36 10 of my partners left. And Jack Fitzgerald and
09:23:43 11 myself stayed. Denny Graff. And then
09:23:47 12 Fitzgerald passed away. And then Graff said he
09:23:49 13 was going to retire. And I said well, I'm
09:23:52 14 going on, so I went to Mark Fornes in 2011.

09:23:56 15 I was going to hang my own broker's
09:23:59 16 license again, but I thought then I had to go out
09:24:01 17 and get an office and everything. Mark and I had
09:24:03 18 been friend for years and we're trustees for that
09:24:07 19 South Dayton Dump Remediation Trust and so we
09:24:09 20 just -- he just said come with me, it's easier.
09:24:12 21 And at the time he was in a building that my
09:24:14 22 stepmother owns. So we just went there.

09:24:16 23 Q. Now, I just want to talk a little
09:24:22 24 bit about your experience at the dump, I don't
09:24:24 25 want to say working at the dump, but, you know,

09:24:25 1 the activities you had there.

09:24:27 2 So let me start, just first of all,
09:24:34 3 what do you consider the correct name for the dump
09:24:36 4 to be?

09:24:36 5 A. It was the South Dayton Dump.

09:24:38 6 Q. And was it ever -- was the
09:24:41 7 business of the -- well, I understand there was
09:24:45 8 the ownership of the dump. Who owned the dump?

09:24:47 9 A. Actually, my father and Cyril
09:24:49 10 Grillo owned the ground, and they leased it to
09:24:56 11 Cyril's two brothers Alcine and Kenny.

09:24:57 12 Q. Just from reading the prior depositions,
09:25:00 13 prior depositions, I wasn't quite clear when
09:25:02 14 the leasing began, whether it began after
09:25:06 15 the --

09:25:06 16 A. Well, they started it after --
09:25:10 17 when Alcine came back from World War II. He
09:25:13 18 came back and that's when they were fiddling
09:25:16 19 around with it and Cyril -- Cyril was an
09:25:20 20 amateur of the fly ash that DP&L had, he
09:25:21 21 figured there had to be some use for it across
09:25:25 22 the road there, but -- but they decided they
09:25:26 23 couldn't do anything about it. So that's when
09:25:30 24 they started the dump, Alcine started the dump.

09:25:32 25 Q. So right after World War II. When

09:25:35 1 did Alcine come back? Do you remember what
09:25:36 2 year that was?

09:25:37 3 A. '45, I imagine. Something like
09:25:38 4 that. When it was over. '46.

09:25:41 5 Q. And did they start the leasing
09:25:43 6 arrangement at that point in time?

09:25:45 7 A. (Witness nods head up and down.)

09:25:47 8 Q. Was it a -- was there a written
09:25:51 9 lease, if you know?

09:25:52 10 A. I think there was at one time, but
09:25:55 11 it probably just ran on and they never changed
09:25:57 12 it.

09:25:57 13 Q. Maybe never renewed it?

09:25:59 14 A. Never renewed it. It just ran and
09:26:03 15 that was it. Though the liability -- some of
09:26:07 16 the liability was Alcine's, wasn't it?

09:26:09 17 Q. That's a different issue.

09:26:12 18 A. Oh, okay.

09:26:13 19 Q. We'll leave that one to the
09:26:16 20 lawyers.

09:26:17 21 A. Oh, I'm sorry.

09:26:17 22 Q. All right. Do you remember the
09:26:20 23 dump ever being referred to as Grillot's dump?

09:26:25 24 A. No. I don't know what they ever
09:26:27 25 referred to it as because I always knew it as

09:26:32 1 the South Dayton Dump. In fact, we had a
09:26:34 2 sailboat -- friends of mine, we used to party
09:26:38 3 down there and they'd say where do you keep
09:26:43 4 your boat and we'd say the South Dayton Yacht
09:26:46 5 Club.

09:26:46 6 Q. Or how about Broadway Dump? Did
09:26:49 7 you ever hear that?

09:26:49 8 A. They probably referred to it in
09:26:52 9 just a nomenclature way because that's where it
09:26:53 10 was located, you know.

09:26:55 11 Q. Have you ever heard the term
09:26:59 12 Moraine Recycling?

09:27:00 13 A. Moraine Recycling. Unless that
09:27:05 14 was Romey Schweiterman's operation over on
09:27:08 15 Cardington Road. I never -- unless -- unless
09:27:11 16 Alcine called it that afterwards. See, when I
09:27:13 17 left there in '66 -- I didn't use that office
09:27:20 18 after about '64 -- but when I left there, I --
09:27:24 19 I didn't go over very much then. Whatever
09:27:28 20 Alcine was doing, I didn't know. I stayed out
09:27:31 21 of the thing.

09:27:32 22 Q. Now, you say you didn't use the
09:27:34 23 office after '64. What office did you use
09:27:37 24 after '64?

09:27:38 25 A. I had an office at 46 East

09:27:41 1 Franklin Street in Bellbrook, Ohio.

09:27:42 2 Q. So you started Bellbrook in '64,
09:27:45 3 not '66?

09:27:45 4 A. Well, I used both offices then.
09:27:48 5 I -- I -- I had a lady that worked for me that
09:27:50 6 did commercial and industrial at the time and
09:27:53 7 so I left her at Springboro then. And then
09:27:59 8 when I shut my office down, she got out of real
09:28:03 9 estate.

09:28:03 10 Q. She left the practice?

09:28:05 11 A. Right.

09:28:06 12 Q. All right. Now, you mentioned in
09:28:12 13 one of the early depositions that your first
09:28:15 14 recall of being at the South Dayton Dump was
09:28:18 15 around five years old in 1937?

09:28:20 16 A. Yes. My father -- what had
09:28:22 17 happened is my father bought a farm at
09:28:25 18 sheriff's auction back there behind --
09:28:28 19 Mr. Grillot had the land where South Broadway
09:28:32 20 Sand & Gravel was, and he -- he had fireworks.
09:28:36 21 So he sold fireworks and Christmas trees and
09:28:40 22 stuff like that.

09:28:40 23 Q. That was Cyril?

09:28:41 24 A. Cyril. Yeah. And then he had
09:28:43 25 these tar paper shacks, they were about ten by

09:28:45 1 ten, he'd mount them on fifty gallon drums,
09:28:48 2 he'd sit them out in the field there, and every
09:28:49 3 once in a while the heat or humidity or
09:28:52 4 something would blow them up. So he was afraid
09:28:54 5 the county -- my dad was his attorney. He was
09:28:57 6 afraid the county would get after him and they
09:28:59 7 were friends. And so Dad bought this farm at
09:29:03 8 sheriff's auction back there. It was Dunson
09:29:05 9 farm. It was back there on the river.

09:29:07 10 And the only way into it -- he got --
09:29:09 11 he got a pretty good price on it because there was
09:29:11 12 no frontage to it. It had an easement where DP&L
09:29:14 13 had big lines going back there, the corner of East
09:29:19 14 River Road and -- and South Broadway or Springboro
09:29:21 15 or Dryden or whatever they call it.

09:29:23 16 Q. Do you remember how many acres the
09:29:26 17 farm was?

09:29:26 18 A. There was about seventy acres in
09:29:29 19 that farm.

09:29:29 20 Q. And did that farm eventually
09:29:31 21 become part of the land for the dump?

09:29:33 22 A. Well, the front part did. What
09:29:36 23 happened, over the years, when the conservancy
09:29:39 24 had built the levy down across South Broadway,
09:29:44 25 at the bridge, the river makes a sharp

09:29:46 1 left-hand turn to the south, and they took it
09:29:48 2 around that curve but they didn't build it all
09:29:51 3 the way down because that farm was there when
09:29:54 4 they put that levy in, you know. The
09:29:55 5 conservancy said that farm actually ran to the
09:29:58 6 river.

09:29:59 7 But then later on, the conservancy
09:30:02 8 took part of that ground and they built the levy
09:30:05 9 on down south. They took the part near the river.
09:30:08 10 There's a bike path on -- where the levy is now
09:30:11 11 and there's still ground on the other side of the
09:30:14 12 river -- or on the other side of the bike path, on
09:30:18 13 the levy, that was part of this farm.

09:30:20 14 Q. Uh-huh. And that was taken by
09:30:21 15 imminent domain?

09:30:23 16 A. Yes. They took it, the
09:30:24 17 conservancy. In fact, the conservancy still
09:30:26 18 owns some property south of this -- the dump,
09:30:29 19 the old dump and the lake down there, the
09:30:31 20 gravel pit. There was two gravel pits there.

09:30:37 21 Q. Okay. Then your prior testimony,
09:30:38 22 you said in about 1947, you were fifteen, is
09:30:41 23 when you started picking scrap at the dump?

09:30:45 24 A. Yeah. We used to go back. And I
09:30:47 25 did it on Saturdays, you know, I'd go down and

09:30:51 1 pick up a load of change. They didn't pay me
09:30:54 2 much, but it was better than nothing.

09:30:55 3 Q. And who would have hired -- who
09:30:58 4 hired you? Was it Alcine?

09:30:59 5 A. No. No. My dad and Cyril sent me
09:31:02 6 back there. My dad -- I never really -- I
09:31:05 7 picked, but I never worked for Alcine. They
09:31:07 8 had some independent pickers that used to pick
09:31:10 9 scrap iron and, you know, when they took
09:31:13 10 household goods and paper stuff, you know,
09:31:17 11 cardboard boxes and stuff like that, they'd
09:31:20 12 pick them and they'd sell them. But they had
09:31:23 13 about three or four guys that worked there off
09:31:25 14 and on pretty regularly. They were just
09:31:29 15 itinerate people.

09:31:30 16 Q. So you said we. You and your
09:31:32 17 brother would go?

09:31:32 18 A. Well, my brother wouldn't go. He
09:31:34 19 didn't go until he was older.

09:31:34 20 Q. Uh-huh.

09:31:36 21 A. My dad -- my dad couldn't get him
09:31:39 22 to work too much.

09:31:39 23 Q. So you went with your dad?

09:31:41 24 A. Huh?

09:31:42 25 Q. You would go to the dump with your

09:31:45 1 dad on Saturdays?

09:31:45 2 A. Oh, we'd get a ride down there.

09:31:49 3 Yeah. If he was going down there before he had
09:31:50 4 his office down there, he'd drop us off and
09:31:54 5 pick us up.

09:31:55 6 Q. Was there anyone else that would
09:31:56 7 go with you?

09:31:56 8 A. No, not really.

09:31:57 9 Q. So it was just your dad bringing
09:31:59 10 you?

09:31:59 11 A. Yeah. He'd drop me off down
09:32:02 12 there.

09:32:02 13 Q. Okay.

09:32:02 14 A. Cyril was usually down there.

09:32:04 15 Q. Okay. Now, you testified that you
09:32:05 16 would occasionally go on Sundays as well?

09:32:09 17 A. Once in a while. Yes.

09:32:10 18 Q. What about after school, during
09:32:12 19 the week?

09:32:12 20 A. No.

09:32:12 21 Q. So it was a weekend thing?

09:32:15 22 A. It was just -- just a weekend,
09:32:16 23 part-time job or pick-up, you know.

09:32:18 24 Q. Okay. About how much money would
09:32:20 25 you make a week or, you know, when you were

09:32:21 1 there for a day, what would you make?

09:32:24 2 A. Well, geez, I don't know. Maybe
09:32:27 3 twenty dollars. Maybe fifteen. I don't know.
09:32:30 4 Ten. Just according to what I got and what I
09:32:32 5 was able to sell to Patterson Iron & Metal,
09:32:36 6 you know, Mr. Patterson up there on -- off of
09:32:44 7 Fifth Street behind Borden's Deli there.

09:32:45 8 Q. And this would be throughout the
09:32:47 9 school year in the summer?

09:32:48 10 A. No, I didn't do it in the summer.
09:32:50 11 It was just during the school year. Usually
09:32:54 12 just in the fall and spring. I didn't go over
09:32:57 13 in the wintertime.

09:32:58 14 Q. Okay. Now -- and this went on,
09:33:03 15 other than when you were in Georgia, you
09:33:05 16 continued to do this?

09:33:06 17 A. No. I -- really I didn't from
09:33:08 18 about my -- oh, I guess about my junior year in
09:33:13 19 college, I had another job. I worked for
09:33:16 20 Rike's, and I worked for Kremer's tending bar
09:33:18 21 after I was twenty-one.

09:33:19 22 Q. You worked for Kremer. And who
09:33:21 23 else?

09:33:21 24 A. Rike's. Rike-Kumler department
09:33:25 25 store.

09:33:25 1 Q. Oh, I see.

09:33:28 2 A. The Federated store.

09:33:28 3 Q. So by the time you were a junior
09:33:29 4 in college, you stopped picking at the --

09:33:29 5 A. I got educated. I had a
09:33:33 6 white-collar job.

09:33:33 7 Q. All right. So your period of time
09:33:35 8 is from when you were fifteen years old until
09:33:37 9 you were a junior in college?

09:33:39 10 A. Yeah. Well, about then. Yeah. I
09:33:43 11 went back -- yeah, in college. Yeah. But I
09:33:45 12 didn't go back after my junior year.

09:33:49 13 Q. You didn't go back to the dump to
09:33:51 14 pick?

09:33:51 15 A. No. I had a better job.

09:33:53 16 Q. Now, you had testified that in
09:33:59 17 1955, because of some sort of injunction --

09:34:03 18 A. Yes. The City of Dayton got an
09:34:05 19 injunction against them because mysteriously
09:34:10 20 that dump would catch on fire every morning
09:34:11 21 about 2:00 every morning and all the smoke
09:34:14 22 would come right up the river into the city of
09:34:17 23 Dayton. So they got an injunction. They
09:34:20 24 stopped them from burning.

09:34:20 25 Q. Did you ever solve the mystery?

09:34:20 1 A. Please?

09:34:20 2 Q. Did you ever solve the mystery?

09:34:24 3 A. No. I knew who the cause of it
09:34:26 4 was, but it was none of my business so I didn't
09:34:29 5 do anything.

09:34:30 6 Q. So what -- what was set on fire,
09:34:34 7 all of the trash that they had accumulated for
09:34:37 8 the day?

09:34:37 9 A. The trash for the day. And they
09:34:40 10 took some -- had some tires they burned. They
09:34:43 11 were really nasty. They'd get real black and
09:34:46 12 come up that river. Our prevailing windows are
09:34:49 13 out of the southwest, and they'd come right up
09:34:52 14 that river and right into the city of Dayton.

09:34:54 15 Q. Why would they add tires? Do you
09:34:58 16 know?

09:34:58 17 A. I don't know. Household tires.
09:35:00 18 Somebody dropped them -- you know, somebody
09:35:02 19 dropped them off. They didn't have a regular
09:35:05 20 tire distributor. You know, maybe -- maybe a
09:35:06 21 service station, make a one stop, had to have
09:35:08 22 some tires, and just dump them.

09:35:10 23 Q. And up until that point, was the
09:35:13 24 South Dayton Dump accepting, I guess, what they
09:35:16 25 call municipal waste, household trash?

09:35:19 1 A. Household trash. They'd take
09:35:22 2 anything. Yeah.

09:35:22 3 Q. And were there regular household
09:35:27 4 trash haulers that would come into the dump?

09:35:29 5 A. No, not really. It was just, you
09:35:31 6 know, somebody that had trash and wanted to get
09:35:34 7 rid of it, you know, was really what it is.
09:35:36 8 Sometimes they'd come in with a pickup upload,
09:35:39 9 sometimes they'd have a trunk load. It was
09:35:41 10 just people getting rid of trash is all it was.

09:35:44 11 I think they charged them fifty cents
09:35:46 12 or something like that. I don't know. Kenny,
09:35:49 13 Alcine's brother, collected the money for that.
09:35:51 14 And then the regular ones were really paid by the
09:35:55 15 month, I think. I don't know. My dad used to get
09:35:59 16 the -- get the -- when he'd do his taxes, I'd see
09:36:04 17 some of them there. They got a regular fee from
09:36:07 18 Alcine. They paid a regular monthly fee. And
09:36:11 19 then some of the overage, if he had some of the
09:36:13 20 companies that would dump more, they'd get a
09:36:16 21 percentage of that. He'd pay a percentage of that
09:36:19 22 as an overage, you know, and it was just --

09:36:22 23 MR. MUSTO: I'm sorry. You're kind
09:36:23 24 of trailing off.

09:36:25 25 THE WITNESS: I'm sorry. I got you a

09:36:27 1 little cold here.

09:36:30 2 There was a little overage paid in
09:36:33 3 regard to the lease price for the dump with some
09:36:36 4 of the regular customers that came in all the
09:36:38 5 time. And when they'd dump so much, then Alcine
09:36:41 6 would have to tell them how much they dumped,
09:36:45 7 Kenny would, but how many times they were in, you
09:36:47 8 know, and they collected and then they'd got an
09:36:49 9 overage. The owners of the land would get an
09:36:51 10 overage on this according to the lease, you know.
09:36:53 11 And that's where I saw some of the company names,
09:36:56 12 when they would enter the overage, not just what
09:36:59 13 came from the lease, original lease, but the
09:37:02 14 overage, they'd entered what company had to pay
09:37:06 15 overage.

09:37:07 16 Q. Okay.

09:37:07 17 A. So that's where I picked up some
09:37:07 18 of it.

09:37:12 19 Q. Okay. So this is where you saw
09:37:14 20 some documentation of the overage?

09:37:16 21 A. Very little. I mean, just at tax
09:37:19 22 time, you know, in March.

09:37:20 23 Q. Uh-huh.

09:37:22 24 A. I'd help him do his books.

09:37:24 25 Q. You'd help do the books to prepare

09:37:27 1 for the taxes?

09:37:27 2 A. Just my father's. Yes. And
09:37:29 3 Grillo and Boesch. Yeah. I'd just run the
09:37:32 4 adding machine.

09:37:32 5 Q. So you'd see some of the
09:37:34 6 documentation on the extra money they were
09:37:36 7 given, the overage is what you call it?

09:37:38 8 A. Well, they had to declare where
09:37:40 9 the money came from, yeah, on the overage.
09:37:42 10 Yeah.

09:37:42 11 Q. Uh-huh. Okay.

09:37:43 12 A. Yes.

09:37:43 13 Q. Now, you said that the overage was
09:37:46 14 really tied to the regular customers --

09:37:48 15 A. Yes, sir.

09:37:48 16 Q. -- of the dump?

09:37:49 17 A. Yeah.

09:37:51 18 Q. You mentioned that after the
09:37:55 19 injunction, which you said was in 1955?

09:37:58 20 A. I was in the service, but it was
09:38:00 21 served in the summer of 1955, they stopped it.
09:38:03 22 I don't know what time.

09:38:04 23 Q. Okay. Then the dump continued to
09:38:07 24 take what you called solid fill?

09:38:11 25 A. Yes.

09:38:11 1 Q. What do you mean by solid fill?

09:38:14 2 A. Well, like if they dig a
09:38:15 3 foundation for a basement, they'd take a
09:38:18 4 basement, you know, and contractors would have
09:38:19 5 that, they'd bring it over and dump it. And a
09:38:22 6 lot of times, when they were doing road work,
09:38:25 7 you know, if they had a contract on a road and
09:38:27 8 they had to scrape it down, take it down, you
09:38:30 9 know, the over burden, they'd bring that down.
09:38:33 10 It was all solid. I mean, there would be some
09:38:37 11 rocks in it, things, too. Sometimes if they
09:38:40 12 tear a house down, and they had an old house
09:38:42 13 like there was some around west Dayton and east
09:38:46 14 Dayton there that had stone foundations, they'd
09:38:50 15 bring that stone down and dump it. They had to
09:38:53 16 get rid of it someplace, the contractors did.
09:38:56 17 Those were just individuals that would come in
09:38:58 18 and dump.

09:38:59 19 Q. And had the dump accepted solid
09:39:02 20 fill prior to the injunction?

09:39:03 21 A. Oh, yeah. They took anything.
09:39:05 22 Anything and everything.

09:39:06 23 Q. And the customers, the larger
09:39:13 24 customers, continued -- they weren't affected
09:39:16 25 by the injunction, were they?

09:39:17 1 A. No.

09:39:18 2 Q. So larger customers brought in --

09:39:20 3 A. The injunction was against
09:39:22 4 burning. They couldn't burn the dump. That's
09:39:25 5 exactly what it -- it wasn't a burning dump
09:39:29 6 after that.

09:39:30 7 Q. So the dump stopped accepting
09:39:32 8 household waste?

09:39:33 9 A. Yeah.

09:39:33 10 Q. Because they couldn't burn it?

09:39:35 11 A. Because they couldn't burn it.
09:39:37 12 They wouldn't take a lot of the household
09:39:39 13 waste.

09:39:40 14 Q. Now, you had mentioned in the last
09:39:47 15 deposition that for a time, all of the general
09:39:50 16 manufacturers used South Dayton Dump in the
09:39:53 17 area.

09:39:54 18 A. Well, not all of them. You know,
09:39:56 19 there was Powell Road, there was Blaylock's,
09:40:00 20 there was Cardington. I mean, they all didn't
09:40:03 21 use them. But they had been the oldest dump
09:40:08 22 south. And some of the people who were used to
09:40:10 23 coming to them kept coming to them. Yes.

09:40:12 24 Q. South Dayton Dump was the oldest
09:40:15 25 dump south?

09:40:15 1 A. Well, they had the Charlie Cinn
09:40:18 2 Dump, but that had been closed years ago, back
09:40:21 3 in the '20s.

09:40:22 4 Q. This was the dump that was --

09:40:24 5 A. On the north end of this property.

09:40:27 6 Q. Charlie Cinn, C I N N?

09:40:30 7 A. C I N N. Cinn. Yeah.

09:40:33 8 Q. Did your dad and Cyril eventually
09:40:35 9 buy that property, Cinn's Dump?

09:40:37 10 A. Yes. They bought that property on
09:40:40 11 the north end. Yes, sir.

09:40:42 12 MS. KAUFMAN: I can't hear. I'm
09:40:42 13 sorry.

09:40:46 14 THE WITNESS: Yes. They purchased
09:40:47 15 that property on the north end of this property,
09:40:51 16 up by the old Broadway bridge up there, coming
09:40:54 17 south, across from DP&L there where Valley
09:40:58 18 Asphalt's entrance is now. Yeah, they bought
09:40:59 19 that. Mostly it was a lot -- well, actually, that
09:41:02 20 building was Fleming Rainey, the GMC truck dealer,
09:41:05 21 where B&G is now, and they had that lot where they
09:41:09 22 stored trucks, you know, that they were working on
09:41:10 23 and selling and stuff like that.

09:41:12 24 Q. Now, you also testified that while
09:41:43 25 you were in college at the University of

09:41:45 1 Dayton, that some afternoons in college, during
09:41:48 2 the Korean War, you'd come over to the dump to
09:41:51 3 pick scrap.

09:41:52 4 A. Well, I'd just go over to see if
09:41:54 5 they were running the conveyor thing, you know,
09:41:57 6 the magnetic conveyor thing, if they were going
09:41:58 7 to be running on the weekend. I didn't really
09:42:00 8 do much in the way of work over there.

09:42:02 9 Q. On the weekdays?

09:42:04 10 A. On the weekdays, no. I'd just go
09:42:07 11 over and see what was going on. Then I'd go
09:42:10 12 back. Because I wasn't that far from
09:42:13 13 University of Dayton to run over there, see
09:42:16 14 what they were doing on the way home, you know.

09:42:18 15 Q. Now, just so I'm clear, when you
09:42:20 16 talk about running the conveyor belt, who --
09:42:22 17 was that part of the operation of the dump or
09:42:24 18 was that part of Broadway Sand & Gravel?

09:42:27 19 A. Well, that was part of the
09:42:29 20 operation of the dump. Cyril came up with that
09:42:34 21 idea, Grillot, mining that. The scrap iron got
09:42:37 22 pretty high during the Korean War, whatever you
09:42:42 23 want to call it, police action.

09:42:43 24 Q. The price of scrap?

09:42:45 25 A. The prices were up so they --

09:42:48 1 Cyril picked this idea up down in Miami
09:42:51 2 someplace, Florida. He was messing around down
09:42:54 3 there and he saw this conveyor belt with a
09:42:56 4 magnetic overlap. He came up and talked to
09:43:00 5 Alcine and then Alcine set it up. Alcine and
09:43:03 6 Kenny. Yeah. Yes.

09:43:04 7 Q. So would all of the trash coming
09:43:08 8 into the dump go through the conveyor belt with
09:43:11 9 the magnet pulling out the metal?

09:43:13 10 A. No, they didn't -- what they did,
09:43:15 11 they set that conveyor belt up to mine the old
09:43:18 12 dump and part of the new dump where scrap --
09:43:21 13 where they knew metal was, where they knew --
09:43:25 14 scrap metal. There was some car bodies that
09:43:27 15 had been dumped down there years ago. There
09:43:30 16 were some drums, fifty-gallon drums, you know,
09:43:33 17 and they were mining for that. And that was
09:43:35 18 really at the north end coming south from the
09:43:38 19 Broadway bridge across from DP&L. They dug a
09:43:43 20 big trench down through there. And, of course,
09:43:46 21 Broadway, they use their trucks and a steam
09:43:48 22 shovel.

09:43:48 23 Q. They used Broadway Sand & Gravel's
09:43:53 24 steam shovel and trucks?

09:43:54 25 A. Oh, they'd pay them for them but

09:43:54 1 they'd have them do them because a lot of times
09:43:55 2 in the wintertime, they weren't too busy, you
09:43:58 3 know, so they'd use the trucks.

09:44:00 4 Q. And who ran this operation,
09:44:02 5 Alcine?

09:44:02 6 A. Alcine ran it. And, of course,
09:44:06 7 Cyril oversaw it because it was his baby. But
09:44:08 8 that was just his -- that had nothing to do
09:44:11 9 with the leases or anything.

09:44:12 10 Q. Now, speaking of drums, do you
09:44:16 11 know whether drum waste ever came into the
09:44:19 12 site?

09:44:19 13 A. Not -- not per se. There was a
09:44:25 14 company that leased a building up at the north
09:44:28 15 end where you went into Valley Asphalt there,
09:44:34 16 Ottoson Solvents. They'd re -- refurbish
09:44:35 17 drums. You know, they'd get drums and clean
09:44:36 18 them up and sand them down and paint them again
09:44:39 19 and sell them.

09:44:40 20 Q. Reconditioned?

09:44:41 21 A. Pardon?

09:44:42 22 Q. Reconditioned?

09:44:42 23 A. Reconditioned.

09:44:43 24 Q. What about drums of waste coming
09:44:48 25 to the South Dayton Dump operation itself?

09:44:50 1 A. The only time that I ever remember
09:44:53 2 any drums coming in was from the Frigidaire
09:44:58 3 plant. They'd have shavings in them where they
09:45:03 4 were fine tuning some of their products or
09:45:06 5 something and there would be metal shavings.
09:45:07 6 And that's the only thing that I remember that
09:45:09 7 came in in drums. That wasn't a large amount.

09:45:11 8 Q. What about drums or other
09:45:15 9 containers with liquids in them?

09:45:16 10 A. No, they didn't.

09:45:17 11 Q. You don't have any memory of that?

09:45:18 12 A. No memory of that. No, sir.

09:45:21 13 Q. All right. I'm going to ask you
09:45:24 14 about some companies or entities.

09:45:32 15 What about Montgomery County? Did
09:45:33 16 Montgomery County ever bring any waste to the
09:45:36 17 site?

09:45:36 18 A. Not to my knowledge.

09:45:37 19 Q. Okay. You mentioned in one of
09:45:41 20 your prior depositions seeing yellow trucks
09:45:44 21 from Montgomery County coming to the dump?

09:45:49 22 A. I mentioned that? I can't think
09:45:57 23 what they'd have that they would dump there.
09:46:00 24 Solid fill maybe when they had some over
09:46:01 25 load -- turned roads. That's the only time.

09:46:01 1 Maybe that's what I was thinking of. You know,
09:46:03 2 when they cut the roads down or cut a new road
09:46:06 3 through, cut the berm or resurface it, you
09:46:09 4 know.

09:46:09 5 Q. And your road crew job was for the
09:46:12 6 County, right?

09:46:13 7 A. Please?

09:46:14 8 Q. When you did the road crew work,
09:46:17 9 was the County your employer?

09:46:18 10 A. Yes, sir. Montgomery County
09:46:20 11 Engineers.

09:46:20 12 Q. And do you remember them having
09:46:23 13 yellow trucks?

09:46:24 14 A. Oh, yeah. That's what they had at
09:46:25 15 the time.

09:46:26 16 Q. Okay. You mentioned at one of the
09:46:31 17 deps, in the 2011 deposition, a foundry, Sam
09:46:38 18 Finn Foundry.

09:46:39 19 MS. KAUFMAN: A what?

09:46:39 20 MR. SILVER: Sam Finn Foundry.

09:46:41 21 THE WITNESS: Oh, they had a
09:46:44 22 foundry up -- it was up on Cincinnati Street. And
09:46:47 23 I knew the fellow that managed it, Dick Earman.
09:46:51 24 And they'd have some foundry cores, you know,
09:46:57 25 that -- I can't remember what the name of the

09:46:59 1 company was. He was a brother to Estherbrook,
09:47:05 2 Finn & McGee. Sam Finn was a brother to that law
09:47:08 3 firm.

09:47:08 4 Q. Oh, so Sam Finn was one of the
09:47:10 5 what, owners or --

09:47:12 6 A. He had this foundry up there.

09:47:14 7 Q. But you don't remember his
09:47:16 8 company's name?

09:47:17 9 A. I don't remember whether it was
09:47:22 10 Mallivar -- wait a minute. I don't know what
09:47:23 11 the name of -- I can't remember the name of the
09:47:24 12 company, but it was up on Cincinnati
09:47:28 13 Street in West Dayton there.

09:47:28 14 Q. And you mentioned a fellow you
09:47:32 15 knew there named Dick Earman?

09:47:35 16 A. Earman. E A R M A N.

09:47:39 17 Q. Still alive?

09:47:43 18 A. No. He's dead. He died in
09:47:44 19 Pennsylvania about a year ago.

09:47:45 20 Q. And Sam Finn, F I N N?

09:47:48 21 A. Yes. Yeah. He was a brother to
09:47:50 22 the partner in Esterbrook, Finn & McGee.
09:47:55 23 That's how I remember it.

09:47:56 24 Q. Do you know if Sam Finn is still
09:47:58 25 alive?

09:47:59 1 A. No. He's not still alive. Most
09:48:01 2 of these guys would be a hundred and some if
09:48:05 3 they were still alive, I hate to tell you.

09:48:07 4 Q. Yeah. That's an issue with this
09:48:10 5 case. So Cincinnati Street, did you say?

09:48:13 6 A. Their place was on Cincinnati
09:48:18 7 Street, north up --

09:48:20 8 Q. West Dayton? Did I get that
09:48:23 9 wrong?

09:48:23 10 A. Yeah. It's west Dayton. Wait a
09:48:26 11 minute. Let me see now. Was it Cincinnati or
09:48:29 12 South Broadway? See, that South Broadway ran
09:48:31 13 up there, too. It could have been South
09:48:40 14 Broadway. The two streets run down -- they're
09:48:45 15 almost parallel. It was between Cincinnati
09:48:52 16 Street and South Broadway but exactly where, I
09:48:53 17 don't know because South Broadway come all the
09:48:54 18 way down through the west side and Cincinnati
09:48:58 19 Street started at Washington Street and ran
09:49:00 20 behind St. Elizabeth's Hospital there. And
09:49:03 21 they were in that area up there. It was an
09:49:06 22 industrial area up in there. Which street they
09:49:08 23 were on -- I think it was Cincinnati Street,
09:49:11 24 but I couldn't swear to it.

09:49:13 25 Q. Okay. If you think of the name of

09:49:18 1 the company, of Sam Finn's company, let us
09:49:23 2 know.

09:49:23 3 A. I will.

09:49:24 4 Q. Tell Tim. All right. Let me ask
09:49:26 5 you about -- just the office you had when you
09:49:34 6 were working in real estate when you moved into
09:49:42 7 an office next to the entrance of the dump.

09:49:48 8 You testified in 2011 that you had
09:49:50 9 an office with windows going north and east
09:49:54 10 from your --

09:49:55 11 A. Yeah. The building actually faced
09:49:58 12 what's Dryden Road now. And I had the front
09:50:02 13 office. So I had -- we had a door and a
09:50:04 14 vestibule and a waiting room. I had the front
09:50:07 15 office there. And I had a window in that
09:50:09 16 office on the -- it would be on the -- looking
09:50:15 17 east and then I had a window on the side
09:50:18 18 looking north. I was on the corner. It's
09:50:20 19 still there, right across from the trucking
09:50:24 20 company, B&G Trucking, now.

09:50:27 21 Q. And you testified that the
09:50:28 22 entrance to the dump at that time was outside
09:50:30 23 your window to the north?

09:50:32 24 A. Yes.

09:50:32 25 Q. So you had a good view of vehicles

09:50:38 1 coming into the dump?

09:50:38 2 A. I would say when I was at my desk,
09:50:41 3 yeah. I had my desk facing out because I had
09:50:43 4 the door open and behind me and I used to keep
09:50:46 5 it shut. That way I didn't have to see who
09:50:50 6 came in the other part, for the other building,
09:50:53 7 you know, see my dad or Cyril or someone, you
09:50:54 8 know.

09:50:54 9 Q. So you didn't have to see who
09:50:56 10 walked into the building, is that what you're
09:50:56 11 saying?

09:50:57 12 A. Yeah.

09:50:57 13 Q. But you were able to see outside
09:50:59 14 through the windows?

09:51:00 15 A. Yeah. My desk -- I put my desk so
09:51:02 16 it faced the window on the north. And then to
09:51:06 17 my right was the window on the east -- looking
09:51:09 18 east, facing east. I was on the west side of
09:51:12 19 Broadway there.

09:51:13 20 Q. And from where your office was,
09:51:15 21 where was the gate -- there was a gate
09:51:20 22 entrance?

09:51:20 23 A. The gate was in the back. It was
09:51:22 24 halfway back. If you got one of the photos,
09:51:24 25 you'll see that where the B&G Trucking Company

09:51:27 1 is, there's a building behind them. And then
09:51:29 2 right across the way, there's another building,
09:51:31 3 and that was the dump building. That's now
09:51:34 4 occupied by a vending machine company.

09:51:36 5 Q. We will mark this as Boesch
09:52:26 6 Exhibit 1.

09:52:26 7 (Thereupon, Boesch Exhibit Number 1
09:53:36 8 was marked for purposes of identification.)

09:53:36 9 (Thereupon, an off-the-record
09:53:37 10 discussion was had.)

09:53:37 11 (Thereupon, a break was had.)

10:03:55 12 Q. Okay. Jack, I put in front of you
10:03:58 13 an aerial photograph. Let me start out by
10:04:02 14 asking, do you recognize what's in the photo?

10:04:05 15 A. Yes.

10:04:06 16 Q. Can you describe what you see?

10:04:08 17 A. Well, I see the South Broadway
10:04:13 18 properties there, Valley Asphalt and across the
10:04:17 19 street, DP&L's building there.

10:04:19 20 Q. South Broadway, is that the road
10:04:22 21 coming straight down the middle of the --

10:04:25 22 A. That is, sir.

10:04:26 23 Q. Top to bottom?

10:04:27 24 A. Uh-huh.

10:04:28 25 Q. Do you see where it says Dryden

10:04:31 1 Road towards the bottom part of that photo?

10:04:34 2 A. Yes, sir. Uh-huh.

10:04:35 3 Q. Is that your understanding of
10:04:36 4 where Dryden Road is in this photo?

10:04:39 5 A. Yes, sir. That is correct.

10:04:40 6 Q. Formerly Springboro?

10:04:44 7 A. Formerly Springboro.

10:04:46 8 Q. Formerly South Broadway?

10:04:48 9 A. Formerly South Broadway.

10:04:50 10 Q. Do you see the South Dayton Dump
10:04:53 11 in this photo?

10:04:54 12 A. Well, it -- where it is is all the
10:04:58 13 trees and stuff, it's all filled up there.

10:05:01 14 There's foliage in the back of the trees and so
10:05:04 15 forth. Yes, sir.

10:05:04 16 Q. And to the left would be to the
10:05:07 17 west of Dryden Road; is that right?

10:05:10 18 A. It would be the west side of
10:05:11 19 Dryden Road. Yes, sir.

10:05:13 20 Q. Can you -- I have a -- I gave you
10:05:16 21 a green pen. It might be in front of you
10:05:18 22 somewhere. Can you locate and circle the
10:05:21 23 building where your office was?

10:05:23 24 A. Yes. (Witness complies with
10:05:31 25 request.)

10:05:31 1 Q. And then write next to it office.
10:05:36 2 Just write the word office in it or next to it
10:05:43 3 with an arrow to it.

10:05:46 4 MR. HOFFMAN: Here, write it in here
10:05:46 5 and then put an arrow over to where you circled
10:05:51 6 it. That makes it easy to see. Now, just take
10:05:54 7 that over there. There you go.

10:05:57 8 THE WITNESS: Well, how you can
10:05:58 9 identify it pretty easy on the right, if you're
10:06:01 10 coming from the river south on Dryden Road, the
10:06:05 11 big white roof building is DP&L. You come to your
10:06:10 12 left and south a little bit, and the next white
10:06:14 13 roof building there is the B&G Trucking Company.
10:06:17 14 And then the next little building -- the little --
10:06:20 15 the big building with the dark roof has a wing on
10:06:23 16 the north end there, a little office wing there,
10:06:25 17 and it has one on the south, too, but we were in
10:06:29 18 the one on the north, okay?

10:06:29 19 Q. Uh-huh.

10:06:30 20 A. And that's small. My office was
10:06:33 21 right in the front, in the corner there. That
10:06:35 22 would be the northeast corner of that building.
10:06:38 23 Okay. And I had a window out the front and out
10:06:42 24 the side there. Behind that building, going up
10:06:47 25 to the pile was the dump building. That was

10:06:50 1 their headquarter. That's where they operated
10:06:52 2 out of.

10:06:52 3 Q. Is that where Kenny --

10:06:54 4 A. That was Kenny and Alcine. And
10:06:56 5 that -- that -- between those two buildings,
10:06:57 6 where my office was and the white roofed
10:07:01 7 building just north of it was the entrance to
10:07:04 8 the dump.

10:07:05 9 Q. Can you put a circle around the
10:07:07 10 dump headquarters and put HQ next to it?

10:07:10 11 A. Yeah. (Witness complies with
10:07:14 12 request.) HQ. How's that for dump?

10:07:17 13 Q. Sounds pretty efficient.

10:07:20 14 A. And then later on, when they
10:07:22 15 closed all that down and Alcine was operating,
10:07:27 16 they came in along the easement. He was in the
10:07:30 17 back, back here, where he had a palletizing
10:07:33 18 machine or something back there. I don't know.

10:07:35 19 Q. A what machine?

10:07:36 20 A. He burned pallets and stuff. He
10:07:39 21 had some kind of trash machine that he enclosed
10:07:42 22 and he had a funnel out, you know, the top,
10:07:48 23 chimney, and he burned wood pallets and things
10:07:50 24 like that back there. I don't know.

10:07:52 25 Q. You had a chance to see that on

10:07:55 1 occasion?

10:07:56 2 A. You can't see it on this, where it
10:07:59 3 was. I was only back there once. I had no --
10:08:01 4 no interest to go back there because at the
10:08:03 5 time, I sold my interest when my father died to
10:08:08 6 his partner, Mr. Grillot. And my sisters and
10:08:11 7 sister-in-law, and my brother was -- or my
10:08:14 8 brother and my sister, sister sold to my
10:08:19 9 stepmother.

10:08:19 10 And the reason I sold to Mr. Grillot
10:08:21 11 is because he owed me on a commission on the other
10:08:24 12 side of the road and I wanted to get paid that and
10:08:27 13 he was arguing with me on that. So he agreed to
10:08:30 14 pay me, and I said okay. I made more money than
10:08:34 15 the rest of them.

10:08:34 16 Q. This is after your father died in
10:08:38 17 1979?

10:08:39 18 A. Yes.

10:08:39 19 Q. And you sold your interest to --

10:08:39 20 A. Yeah. And I stayed -- I was gone
10:08:42 21 from there. I never went back hardly at all.

10:08:44 22 Q. Prior to that, you had a chance to
10:08:47 23 see this wood burning operation?

10:08:50 24 A. I'm sorry?

10:08:51 25 Q. Prior to that, you had a chance to

10:08:53 1 see that wood burning operation?

10:08:55 2 A. Yes. Cyril was still alive, and
10:09:00 3 he told me, he said Alcine has got a wood
10:09:01 4 burning -- he took me back there one day, and
10:09:03 5 he said I'll show it to you.

10:09:05 6 Q. Do you know whose wood was burnt
10:09:07 7 back there?

10:09:07 8 A. I didn't know a thing about that
10:09:09 9 operation. All I did was rode back there with
10:09:12 10 Cyril one morning and he showed it to me and
10:09:14 11 Alcine was there and I don't know what -- who
10:09:16 12 they -- he was burning wood. It was a wood
10:09:18 13 burning thing. He burned used wood because at
10:09:22 14 one time, as you can see, on this map, there
10:09:25 15 was a palletizing yard up front here
10:09:28 16 (indicating). That was on Grillot's ground.

10:09:30 17 Q. Ever hear of something called skid
10:09:34 18 row?

10:09:34 19 A. Where?

10:09:35 20 Q. At the dump.

10:09:36 21 A. Oh, yeah. It was a little bit of
10:09:38 22 everything.

10:09:39 23 Q. All right. Back to your office --

10:09:45 24 A. Yes, sir.

10:09:45 25 Q. -- that you moved into in 1960?

10:09:48 1 A. Yes. That's correct.

10:09:49 2 Q. It gave you an opportunity to see
10:09:51 3 trucks coming into the dump and were there?

10:09:53 4 A. Yes, sir.

10:09:54 5 Q. We've had some testimony on
10:09:57 6 companies you saw in the last deposition. I'm
10:10:00 7 not going to talk about ones where their
10:10:05 8 attorneys were present, but I'm going to ask
10:10:07 9 you about some companies that you testified
10:10:10 10 about at the last deposition where the
10:10:11 11 attorneys were not present at the time to give
10:10:13 12 them an opportunity to ask questions as well.

10:10:19 13 Let me ask you about a company called
10:10:22 14 Peerless Trucking.

10:10:23 15 A. Yes, sir.

10:10:23 16 Q. Do you know the name Peerless
10:10:26 17 Trucking?

10:10:26 18 A. Peerless Transportation.

10:10:28 19 Q. What do you know about Peerless
10:10:29 20 Transportation?

10:10:29 21 A. They were a transporting company.
10:10:31 22 They were a trucking company. They hauled for
10:10:33 23 individuals and things like that.

10:10:35 24 Q. Uh-huh. And then when did you --
10:10:39 25 if you can recall, when did you first hear

10:10:42 1 about Peerless?

10:10:44 2 A. Well, I don't know exact time and
10:10:48 3 date. I remember they had gray trucks. I
10:10:53 4 don't know if that will help anything.

10:10:53 5 Q. Do you remember them back when you
10:10:55 6 were in high school?

10:10:56 7 A. Well, I wasn't around there that
10:10:58 8 much in high school. I just worked on
10:11:00 9 Saturdays. And usually there were nobody
10:11:01 10 dumping on Saturdays except household stuff.

10:11:03 11 Q. Sure. Sure. But I'm asking if
10:11:06 12 Peerless is a name that you remembered back
10:11:08 13 from your high school days. I'm not asking yet
10:11:11 14 who you saw when. I'm just asking you what
10:11:14 15 you -- what you -- when you --

10:11:16 16 A. I heard the name Peerless. And if
10:11:18 17 you were in Dayton, you couldn't miss them.
10:11:21 18 But I don't remember them specifically coming
10:11:24 19 in the dump when I was in high school.

10:11:26 20 Q. Do you remember them coming in at
10:11:28 21 some point in time?

10:11:29 22 A. Well, it was '60s, between '60 and
10:11:34 23 '64 when I was mostly there.

10:11:35 24 Q. What color trucks did you say they
10:11:37 25 had?

10:11:37 1 A. Gray. They had gray trucks.

10:11:39 2 Q. And can you describe the trucks
10:11:42 3 further?

10:11:42 4 A. Well, they were sort of like
10:11:44 5 flatbed trucks with sides on them, you know,
10:11:47 6 like gated sides on them.

10:11:48 7 Q. Uh-huh.

10:11:50 8 A. And that's mostly what I saw.
10:11:53 9 They were transportation. They were probably a
10:11:56 10 ton and a half, you know.

10:11:57 11 Q. Ton and a half size truck?

10:11:59 12 A. Trucks. Yes, sir. Flatbeds.

10:12:01 13 Q. And do you remember seeing the
10:12:03 14 Peerless name on them?

10:12:03 15 A. Peerless Transportation. Yes,
10:12:06 16 sir.

10:12:06 17 Q. Did they have an insignia that you
10:12:08 18 remember?

10:12:08 19 A. Not that I remember. No, sir.

10:12:10 20 Q. Was the name on the doors of the
10:12:12 21 truck, the side doors of the truck? I mean,
10:12:14 22 the cabin doors of the truck.

10:12:17 23 A. I think Peerless had them painted
10:12:20 24 on the back of the cab because their cab was
10:12:22 25 exposed. And I just think that. I can't

10:12:25 1 positively say that.

10:12:27 2 Q. Okay. That's good. How often did
10:12:30 3 you see Peerless -- you saw these trucks coming
10:12:33 4 into the dump past your office?

10:12:37 5 A. How often did I --

10:12:37 6 Q. Well, first I want to ask, did you
10:12:39 7 see these trucks coming into the dump past your
10:12:42 8 office?

10:12:42 9 A. That's where I'd see them at.

10:12:44 10 Yes, sir.

10:12:44 11 Q. Can you give me your best estimate
10:12:47 12 as to how often you would see them?

10:12:49 13 A. No. I don't have any idea how
10:12:51 14 often they come in. I'm sitting there talking
10:12:52 15 on my phone looking out the window and I see a
10:12:55 16 truck go by. Okay? I didn't count them or
10:12:58 17 anything.

10:12:58 18 Q. I understand. Did you see them
10:12:59 19 every year that you worked from '60 to '64 at
10:13:03 20 the office?

10:13:04 21 A. I could have. I don't know for
10:13:06 22 sure. I've seen them come in. I don't know if
10:13:09 23 I saw them every year consistently or not
10:13:13 24 because I really wasn't looking for them.

10:13:14 25 Q. No, I understand that. We're just

10:13:15 1 trying to get as much information as
10:13:17 2 possible --

10:13:17 3 A. Yes, sir.

10:13:17 4 Q. -- that's still truthful. So if I
10:13:19 5 ask for your best estimate, give me your best
10:13:22 6 estimate. Or if you can't, if you can't give
10:13:25 7 me an estimate, then don't.

10:13:31 8 Do you have -- did you know any of
10:13:33 9 the Peerless drivers?

10:13:33 10 A. No.

10:13:35 11 Q. Do you have any idea what was in
10:13:37 12 the Peerless trucks?

10:13:38 13 A. No.

10:13:38 14 Q. Do you know what part of the dump
10:13:41 15 they went to?

10:13:42 16 A. No.

10:13:42 17 Q. Okay. Do you know whether
10:13:46 18 Peerless was one of the regular customers that
10:13:50 19 would have been listed -- that was listed on
10:13:52 20 the overage information you looked at?

10:13:54 21 A. No, they weren't.

10:13:55 22 Q. They were not?

10:13:56 23 A. No. Not on the list that I saw.

10:13:58 24 Q. Okay. And when you say you saw
10:14:01 25 these -- tell me a little bit about when you

10:14:04 1 saw the overage list. You did mention it was
10:14:07 2 around tax time.

10:14:08 3 A. That was -- that was the only
10:14:09 4 time.

10:14:09 5 Q. Was that a one-time thing or was
10:14:11 6 that every few -- every year or more than one
10:14:14 7 year?

10:14:14 8 A. Some -- some years, some of them
10:14:18 9 would be on consecutively and some years they
10:14:21 10 wouldn't be, you know. And to break them down
10:14:24 11 into like maybe Peerless was on in '61, you
10:14:28 12 know, and maybe they weren't on again until
10:14:31 13 '64, you know, I just -- I was just running
10:14:34 14 figures for my dad and he was putting them
10:14:37 15 together. My dad would do all his tax returns,
10:14:39 16 and then he'd take it up to his CPA to get it
10:14:43 17 checked out.

10:14:43 18 Q. He did it himself and take it up?

10:14:46 19 A. He did it himself, yeah.

10:14:47 20 Q. Would he pull you in on an annual
10:14:50 21 basis to help out?

10:14:51 22 A. Well, if he could find me.

10:14:53 23 Q. How successful was he in finding
10:14:56 24 you?

10:14:56 25 A. Well, once in a while, he'd catch

10:14:59 1 me.

10:14:59 2 Q. So during what period of time did
10:15:05 3 you have an opportunity to -- or the -- an
10:15:09 4 opportunity not to get away from it? During
10:15:13 5 what period of time did he come and ask you for
10:15:16 6 assistance?

10:15:16 7 A. He'd usually get me the first
10:15:19 8 couple weeks in March. And that was -- that
10:15:21 9 was really when he did his taxes, you know,
10:15:24 10 because 15th of March, he headed to Florida.
10:15:28 11 Or the 16th rather.

10:15:30 12 Q. Uh-huh.

10:15:34 13 A. But, yeah, he -- I'd just help him
10:15:37 14 run his figures. A lot of times, he'd take me
10:15:40 15 over at night. If I would be home or
10:15:42 16 something, you know, he'd say come on and go
10:15:45 17 over to the office with me, I got to run some
10:15:47 18 tax figures.

10:15:47 19 Q. The office we're talking about is
10:15:50 20 the office you had marked on Exhibit 1?

10:15:52 21 A. On Springboro there, south of
10:15:53 22 Broadway. Most of the time that I was there,
10:15:54 23 it was 2011 Springboro Pike. But they changed
10:15:59 24 the name to South Broadway. I think they
10:16:01 25 changed it when Moraine became the City of

10:16:04 1 Moraine and the Township of Moraine, you know.

10:16:07 2 Q. Sure. That was what, the mid
10:16:09 3 '60s?

10:16:10 4 A. No, that was when VanBuren
10:16:13 5 Township became Kettering. And that was part
10:16:15 6 of VanBuren Township. And then Moraine
10:16:18 7 detached from Kettering and -- they had a vote
10:16:22 8 and they detached. And then they just went
10:16:26 9 back to a township. And then they formed the
10:16:29 10 City of Moraine later on. But they were part
10:16:33 11 of Kettering on the original vote for Van --
10:16:36 12 from VanBuren Township to Kettering.

10:16:39 13 Q. Okay. So you're helping your dad
10:16:41 14 on his taxes when he -- and you were at the
10:16:45 15 office on what is now Dryden Road?

10:16:48 16 A. Yes. That's correct.

10:16:49 17 Q. Were you also helping him with his
10:16:51 18 taxes when you were in college?

10:16:53 19 A. Well, that was -- that was -- no,
10:16:56 20 I didn't do them too much. Once in a while
10:16:59 21 he'd catch me, but I was tending bar at nights
10:17:03 22 at Kremer's and going to school.

10:17:05 23 Q. What about when you were both in
10:17:07 24 the office downtown at the --

10:17:10 25 A. At the Reibold building.

10:17:12 1 Q. Didn't help them there with the
10:17:15 2 taxes?

10:17:15 3 A. No.

10:17:15 4 Q. So it was more later --

10:17:17 5 A. Later on, yes, in the later years.

10:17:20 6 Q. Okay. Anything else you can tell
10:17:24 7 me about the Peerless trucks?

10:17:26 8 A. No. Not really.

10:17:27 9 Q. All right. Now, you mentioned in
10:17:37 10 a couple of affidavits and in the prior
10:17:41 11 depositions a company called Harris Sebold.

10:17:46 12 A. Yes, sir.

10:17:46 13 Q. Do you know what Harris Sebold,
10:17:50 14 what kind of company it was in terms of what it
10:17:53 15 manufactured or did?

10:17:54 16 A. I thought it was a foundry, as far
10:17:57 17 as I know, did some foundry business, but
10:17:59 18 that's about it.

10:17:59 19 Q. Do you know where their location
10:18:01 20 was in the Dayton area?

10:18:02 21 A. No, I don't.

10:18:03 22 Q. And what else can you tell me
10:18:05 23 about Harris Sebold in relation to South Dayton
10:18:09 24 Dump?

10:18:09 25 A. About the only thing is that their

10:18:11 1 trucks came in once in a while. Not often, but
10:18:14 2 they came in.

10:18:14 3 Q. Do you remember what the trucks
10:18:16 4 looked like?

10:18:17 5 A. They were dark. I don't know
10:18:21 6 whether -- a lot of them use that forest green,
10:18:21 7 NCR was a --

10:18:26 8 MS. KAUFMAN: Use the what?

10:18:27 9 THE WITNESS: A forest green. A sort
10:18:28 10 of dark green.

10:18:30 11 Q. You remember Harris Sebold as a
10:18:33 12 dark green?

10:18:34 13 A. I can't swear to it. It was a
10:18:36 14 darker color, but I don't know what -- it
10:18:37 15 wasn't a light one. NCR was a light one. You
10:18:39 16 know, they had the -- the color of their
10:18:41 17 buildings, that sort of cream color, you know.

10:18:46 18 Q. So Harris Sebold, to your best
10:18:49 19 memory, is they had dark color trucks?

10:18:52 20 A. Yes.

10:18:52 21 Q. Do you remember seeing the name of
10:18:54 22 the company anywhere on the trucks?

10:18:56 23 A. No, I don't.

10:18:56 24 Q. But you do remember their trucks
10:19:00 25 coming in?

10:19:00 1 A. Yes.

10:19:01 2 Q. Okay. Do you remember seeing the
10:19:03 3 name of Harris Sebold on the overage documents
10:19:10 4 you looked at, tax documents you looked at for
10:19:12 5 your dad?

10:19:13 6 A. No.

10:19:13 7 Q. So your memory from Harris Sebold
10:19:15 8 comes from seeing them come past the office?

10:19:18 9 A. Just coming past the office. You
10:19:20 10 know, I'd be sitting at my desk talking or
10:19:22 11 working and I'd see these trucks go right by my
10:19:24 12 office. That was about it.

10:19:25 13 Q. Uh-huh. Okay. Anything else you
10:19:28 14 can tell me about Harris Sebold?

10:19:30 15 A. No, I cannot.

10:19:33 16 Q. Now, I wanted to ask you -- I just
10:19:38 17 wanted to go back just -- I'm going to ask you
10:19:42 18 again, it's not about one of the parties here;
10:19:45 19 but Montgomery County, their yellow trucks,
10:19:48 20 have you been thinking about it at all, do you
10:19:50 21 remember seeing them come past your office
10:19:53 22 during that '60 to '64 time period?

10:19:56 23 A. Well, I know they were in there
10:19:59 24 because some of the drivers that worked on the
10:20:00 25 resurfacing crew in the wintertime, you know --

10:20:04 1 or in the summertime, they hauled on the other
10:20:07 2 solid fill, hauling where they were
10:20:09 3 cleaning off -- you know, like we put a coffer
10:20:13 4 dam up on Dorothy Lane, up on the hill there,
10:20:17 5 years ago when -- it was after the tarring
10:20:19 6 season was over because they didn't tar after
10:20:22 7 the -- September. That was about the end.
10:20:24 8 They ran from about June to September on the
10:20:27 9 tar, you know, and then they had -- we had
10:20:30 10 about eight gravel trucks on that crew. And
10:20:32 11 then they'd give them other jobs during the
10:20:35 12 year. And usually it was cutting down hills or
10:20:37 13 cutting out for bridge embankments, you know,
10:20:41 14 and buttrices and stuff.

10:20:43 15 And some of the truck drivers that
10:20:44 16 worked on the tar crew drove those trucks in the
10:20:48 17 wintertime. And if they'd see me in there, they'd
10:20:51 18 stop in and say hi because I knew all those
10:20:54 19 drivers.

10:20:54 20 Q. So if they saw you in your
10:20:57 21 office --

10:20:57 22 A. Yeah. If they saw that my car was
10:20:58 23 there, they'd come in and see if they could get
10:21:01 24 a free cup of coffee.

10:21:03 25 Q. Nothing wrong with that. So what

10:21:05 1 is -- do you remember the names of any of
10:21:08 2 those -- these were County drivers, right?

10:21:09 3 A. Oh, yeah.

10:21:10 4 Q. Do you remember the names of any
10:21:11 5 of those drivers?

10:21:12 6 A. Oh, yeah. There was one named
10:21:15 7 Butts. And there was a Bernie Focht, F O C H T.
10:21:20 8 he lived down around -- and then the Getter
10:21:23 9 boys from Germantown. Henry Dale was from
10:21:27 10 Germantown. Glenn Zinc from Miamisburg -- not
10:21:29 11 Glen Zinc. Niles Zinc from Miamisburg. And
10:21:33 12 oh, let's see. One of them went to work for
10:21:41 13 WHIO. He was a musician. I can't remember his
10:21:44 14 name. That's about it.

10:21:45 15 Q. So any of those groups still alive
10:21:47 16 that you're aware of?

10:21:48 17 A. No.

10:21:49 18 Q. All passed away, do you think?

10:21:50 19 A. There's not a one of them. Kirk
10:21:57 20 Petticrew was the foreman of that crew, tar
10:21:59 21 crew, he was from Miamisburg, and I don't think
10:22:02 22 any of them were alive. They were all back
10:22:05 23 then in their forties and fifties.

10:22:07 24 Q. They could still be alive. So
10:22:11 25 let's go over the names again. I'm going to

10:22:13 1 try to write them down, and spell them.

10:22:15 2 A. Okay. There was the Getters, Roy
10:22:19 3 Getter and his father. They were from
10:22:20 4 Germantown.

10:22:21 5 Q. How do you spell Getter?

10:22:22 6 A. G E T T E R. Henry Dale was from
10:22:27 7 Germantown.

10:22:28 8 Q. D A L E?

10:22:29 9 A. D A L E.

10:22:30 10 Q. Keep going.

10:22:31 11 A. Bernie Focht was from
10:22:36 12 Farmersville. F O C H T. It was a German
10:22:40 13 name.

10:22:40 14 Q. And his name was Bernard?

10:22:44 15 A. Bernard. Yes. He's dead. I know
10:22:46 16 that. And then there was Niles Zink,
10:22:49 17 N I L E S. Z I N K from Miamisburg. And there
10:22:56 18 was a couple -- well, Bill Butts. B U T T S.
10:22:59 19 He was from east Dayton.

10:23:02 20 Q. These are guys you worked with on
10:23:04 21 the crew?

10:23:04 22 A. On the tar crew. Then in the
10:23:06 23 wintertime, they'd bring solid fill in once in
10:23:10 24 a while. How I knew they were bringing it in,
10:23:13 25 because they'd park their truck right outside

10:23:16 1 my window. They'd come in and say have you got
10:23:19 2 any coffee on. But other than that -- if -- if
10:23:24 3 you find one of them alive, he must be about a
10:23:27 4 hundred and ten.

10:23:28 5 Q. Well, that's unlikely. But if you
10:23:30 6 do, I'll send him over for some coffee.

10:23:34 7 Let me ask you about another name
10:23:36 8 that you mentioned if I can find it. You
10:23:56 9 mentioned a Kirk Petticrew?

10:23:58 10 A. Well, he was the foreman of the
10:24:00 11 tar crew from Miamisburg. He really didn't
10:24:03 12 drive any trucks. I was just trying to give
10:24:05 13 you another name on the crew. He was a
10:24:07 14 foreman.

10:24:08 15 Q. Now, I want to ask if you remember
10:25:25 16 any other drivers' names of trucks that came
10:25:27 17 into the --

10:25:28 18 A. Any of the other companies, no. I
10:25:30 19 had no reason to know them. You know, you --

10:25:32 20 Q. Sure. I understand.

10:25:34 21 A. Oh, I guess I should say -- I take
10:25:37 22 that back. I know one fellow that drove for
10:25:40 23 NCR, John Kelly, but he's dead, too. He used
10:25:47 24 to tend bar with us part-time at Kremer's.

10:25:50 25 Q. All right. And did you know any

10:25:51 1 of the DP&L drivers?

10:25:54 2 A. No. No.

10:26:05 3 Q. All right. Did you know Cyril's
10:26:13 4 children?

10:26:13 5 A. Cyril Grillot?

10:26:15 6 Q. Yes.

10:26:15 7 A. Oh, yeah. Uncle Cyril.

10:26:18 8 Q. Who were Cyril's children?

10:26:20 9 A. Who were Cyril's children?

10:26:23 10 Q. Right.

10:26:23 11 A. Eddie was the oldest. Then

10:26:26 12 Ronnie. Then Tony. Antoinette. Tony. And

10:26:32 13 then John. Three boys and one girl. Well, no,

10:26:36 14 he had Jack, Cyril, Jr., who was from his first

10:26:40 15 marriage. Then he had a daughter. She lived

10:26:43 16 over in Indiana someplace from his first

10:26:47 17 marriage.

10:26:47 18 Q. Now, what, if any, of Cyril's

10:26:51 19 children did picking or otherwise worked at the
10:26:54 20 dump?

10:26:54 21 A. Well, really, other than Jack, and
10:26:57 22 he never came around the dump at all. Cyril,
10:27:02 23 Jr., he -- he worked for NCR and he never came
10:27:06 24 around the dump at all. Then Cyril's second
10:27:09 25 family, Eddie would come down once in a while

10:27:09 1 with Cyril, but he wasn't old enough to do
10:27:09 2 anything when I was there.

10:27:16 3 After I left in '66 -- '64 -- well, I
10:27:20 4 really didn't go back much after '64 in the
10:27:26 5 offices. But Cyril had him around sometimes but
10:27:29 6 that's all. Then Johnny was too young. He was
10:27:32 7 still in -- I think he was in lower grade school,
10:27:35 8 you know.

10:27:36 9 Q. So you don't know whether John
10:27:37 10 ever worked at the dump then, right?

10:27:38 11 A. I don't think John ever did. John
10:27:41 12 never -- he's a CPA. And he graduated from UD.
10:27:46 13 But he's -- let's see. John is probably --
10:27:50 14 he's only maybe fifty, I don't know, forty
10:27:55 15 some, fifty. A lot of this stuff was fifty,
10:27:58 16 sixty, sixty years ago, seventy years ago.

10:28:00 17 Q. Absolutely. Any other family
10:28:02 18 members of the Grillot family that you know of
10:28:04 19 that worked at the dump?

10:28:05 20 A. Well, Cecil was a stone mason,
10:28:09 21 another brother, and he did some work down
10:28:14 22 there, I don't know what it was, but it was for
10:28:16 23 Kenny and Alcine. But he didn't work on the
10:28:18 24 dump or anything.

10:28:19 25 Q. And he passed away, Cecil?

10:28:22 1 A. Yes.

10:28:23 2 Q. And what about in the Boesch
10:28:25 3 family, anyone else in the Boesch family?

10:28:26 4 A. No. No. My uncles never came
10:28:29 5 down there.

10:28:30 6 Q. And no cousins?

10:28:33 7 A. No. My cousins, no.

10:28:37 8 MR. SILVER: All right. That's all
10:28:38 9 the questions I have for you. Thank you for your
10:28:38 10 time.

10:28:38 11 THE WITNESS: Okay.

10:28:41 12 MR. SILVER: Thanks for your time.

10:28:42 13 THE WITNESS: You're welcome.

10:28:48 14 MR. FRY: I'm Roger Fry. I have no
10:28:49 15 questions at this time.

10:29:02 16 MR. HAUGHEY: Do you want to go first
10:29:03 17 since you're Harris?

10:29:03 18 CROSS-EXAMINATION

10:29:34 19 BY MS. KAUFMAN:

10:29:34 20 Q. Hi, Mr. Boesch.

10:29:36 21 A. Yep. Excuse me just a minute,
10:29:40 22 will you, please?

10:29:44 23 (Pause in proceedings.)

10:29:55 24 Q. If you need a break, let me know.
10:29:58 25 And I'll be quick. We met out in the hall. I

10:30:01 1 represent Harris Corporation which owned the
10:30:04 2 Harris Sebold business in Dayton which
10:30:09 3 manufactured commercial paper cutting
10:30:13 4 machinery. And I just want to go through some
10:30:18 5 of the dates because I'm confused.

10:30:30 6 Did you ever see a Harris Sebold
10:30:36 7 truck with foundry cores in it come by the dump
10:30:40 8 when you were there?

10:30:41 9 A. No. I don't know really what they
10:30:44 10 had in their trucks. The only reason I thought
10:30:47 11 it was foundry because Kenny says, you know,
10:30:52 12 that we got too many foundry cores coming in
10:30:55 13 here. There were several companies that dumped
10:30:58 14 their cores in there. That's the only contact
10:31:01 15 I had with them, other than seeing a truck, you
10:31:05 16 know.

10:31:05 17 Q. Okay. When you were looking
10:31:12 18 through the accounts to help your father with
10:31:14 19 his taxes, what time period was that? Were you
10:31:17 20 in college? Were you -- was it after you
10:31:20 21 were --

10:31:21 22 A. Oh, it was -- well, I helped him
10:31:24 23 some when I was in college. I run his adding
10:31:30 24 machines for him. You know, it was one of
10:31:31 25 those old manual ones. Anyway. But I helped

10:31:35 1 him some in college, once in a while, he'd call
10:31:38 2 me up as he got older. But, still, up until he
10:31:42 3 died, he was eighty-two, and he did his taxes
10:31:45 4 himself. And he'd always run them the old way.
10:31:48 5 He didn't use a computer or anything. And
10:31:51 6 that's what I'd just help him do.

10:31:55 7 And that's where I saw -- and,
10:31:57 8 really, when I saw the overages was primarily in
10:32:01 9 the '50s when I was in college and high school --
10:32:06 10 well, I wasn't around the last year of high
10:32:09 11 school. But that was in the '50s.

10:32:11 12 Q. And the customers that had
10:32:14 13 overages, those overages could have been for
10:32:21 14 commercial trash or paper or --

10:32:23 15 A. All it really was -- what it was,
10:32:25 16 was primarily most of the companies were things
10:32:29 17 that were trash or whatever was produced but
10:32:32 18 their company, you know. And whatever product
10:32:35 19 they made, you know, like Frigidaire had those
10:32:41 20 shavings from the ice trays and stuff like
10:32:44 21 that.

10:32:48 22 And as far as the only company that
10:32:50 23 had -- that I seen that I really didn't know what
10:32:53 24 they were hauling was -- was -- the transportation
10:33:01 25 company. The one we were just talking about.

10:33:04 1 MR. HOFFMAN: Peerless?

10:33:05 2 THE WITNESS: Peerless. I never --
10:33:06 3 you know, they were a transportation company, as
10:33:09 4 far as I knew. They hauled for other people, you
10:33:12 5 know. And I -- I didn't really know what any of
10:33:15 6 them hauled in there, to be honest with you,
10:33:18 7 except for the few. The -- Dayton-Walther had a
10:33:21 8 special truck to haul their foundry cores in, and
10:33:24 9 it was like a short bed --

10:33:24 10 Q. Uh-huh.

10:33:26 11 A. -- and it had a flatbed on the
10:33:28 12 back and it had a lift on it where it would
10:33:32 13 pick the foundry core up and drop it on the
10:33:35 14 truck and then take it down and dump it.

10:33:36 15 In fact, they were at one time
10:33:38 16 dumping across the river and the County got -- or
10:33:41 17 the conservancy got on them because they'd dump
10:33:45 18 them right on the river's edge off of West River
10:33:49 19 Road. That's about all I know about that.

10:33:51 20 Q. Okay. And so prior to 1960, you
10:33:57 21 really didn't observe trucks coming in and out
10:34:00 22 because you were there on the weekends?

10:34:02 23 A. Well, yeah, I'd just come down on
10:34:05 24 Saturday. And really, from -- of course, I was
10:34:09 25 in the service from '54 to '56. Then I went to

10:34:13 1 Ohio Northern for a year. And really, that's
10:34:17 2 when he decided -- I came back in '59 and he
10:34:22 3 decided to build that wing down on that
10:34:27 4 building down there because his brothers were
10:34:29 5 moving up to the Third National building and he
10:34:31 6 didn't want to move. And my Uncle Bob was
10:34:34 7 doing a lot of his stuff. He'd just rather do
10:34:37 8 other things. So they built that wing down
10:34:39 9 there. And I -- I was in the Reibold building
10:34:43 10 with him so I went down there.

10:34:44 11 Q. Okay. Give me just a minute. I
10:34:48 12 just wanted to look over my questions.

10:34:57 13 (Pause in proceedings.)

10:35:46 14 Q. Well, I just have one last
10:35:49 15 question. When you went -- when you were in
10:35:51 16 boarding school, did you ever go back to the
10:35:53 17 dump? I didn't hear where that boarding school
10:35:57 18 was. Was it close by to Dayton?

10:35:59 19 A. Fayetteville, Ohio. You mean
10:36:02 20 grade school?

10:36:02 21 Q. Uh-huh.

10:36:03 22 A. No, we wouldn't go -- we wouldn't
10:36:06 23 go to the dump, per se. Of course, that
10:36:08 24 really -- the dump wasn't really in operation
10:36:11 25 then. It wasn't in operation. Really, Alcine

10:36:15 1 was the one that really -- and Cyril -- was the
10:36:18 2 one that pushed the dump. And that was after
10:36:20 3 Alcine got out of the Army in 1945 or '46,
10:36:24 4 something like that. But, no, that dump wasn't
10:36:27 5 in operation then.

10:36:28 6 Q. Okay.

10:36:29 7 A. But we used to go back to the
10:36:31 8 farm. My dad had the farm behind it, you know,
10:36:34 9 which then became part of the dump later on
10:36:37 10 where the gravel pits were.

10:36:40 11 MR. KAUFMAN: Okay. I don't have
10:36:42 12 anything further. Thank you.

10:36:42 13 CROSS-EXAMINATION

10:36:47 14 BY MR. HAUGHEY:

10:36:47 15 Q. Hi. My name is Steve Haughey. I
10:36:52 16 represent some of the Defendants in this claim.

10:36:54 17 Do you want me to call you Mr. Boesch
10:36:56 18 or Jack?

10:36:56 19 A. Jack is fine.

10:36:57 20 Q. I'd like to talk with you a little
10:37:00 21 bit about the taxes. You were referring to
10:37:04 22 overage?

10:37:05 23 A. Yes, sir.

10:37:05 24 Q. I'm trying to understand why
10:37:08 25 you're using that term. Is that just another

10:37:11 1 way to refer to the regular customers who were
10:37:13 2 account customers at the site?

10:37:14 3 A. Well, yes. They had -- they had
10:37:19 4 the lease where Alcine and Kenny leased the
10:37:23 5 ground. It was primarily Alcine's brother
10:37:26 6 Cyril that leased the dump and ran the dump.
10:37:29 7 Then Kenny worked for Huffy and he retired and
10:37:32 8 he worked for Alcine then. Okay? And what
10:37:34 9 they meant by overages, they had some regular
10:37:37 10 customers, monthly customers, you know, account
10:37:41 11 customers, and after they dumped so much, if
10:37:43 12 they went over a certain amount of dumping, you
10:37:47 13 know, then Cyril and Dad collected a percentage
10:37:49 14 of that what I called overage, you know, that
10:37:52 15 was above the regular lease figures. They
10:37:56 16 collected a percentage of that, I think
10:37:57 17 something like thirty percent on that where the
10:38:00 18 customers went over the amount. They usually
10:38:02 19 dumped with their monthly accounts. Some of
10:38:05 20 them had a monthly fee to dump. In other
10:38:08 21 words, they didn't pay when each load came in.

10:38:10 22 Q. Okay. So the -- so if these
10:38:15 23 regular customers went beyond a certain amount,
10:38:17 24 then an additional amount of money was paid by
10:38:22 25 the -- Alcine -- Kenny and Alcine over to your

10:38:26 1 father as his share --

10:38:28 2 A. And Cyril. Yeah.

10:38:29 3 Q. -- of the revenue?

10:38:32 4 A. Yeah.

10:38:32 5 Q. What did you look at? What
10:38:34 6 documents did you look at when you were helping
10:38:36 7 your father fill out the taxes in those years
10:38:40 8 based on this overage you're referring to?

10:38:43 9 A. Well, he had the sheets that
10:38:45 10 Kenny -- or that Alcine had given him for the
10:38:48 11 accounts of the dump, you know. And then he'd
10:38:53 12 make a list of what they got over the regular
10:38:56 13 lease amount and he'd put the company that went
10:38:59 14 on it, in other words, that went over what
10:39:01 15 their annual -- or what their monthly fee was,
10:39:04 16 you know.

10:39:05 17 Q. Okay. And did your father pay
10:39:10 18 estimated taxes every quarter or --

10:39:14 19 A. Oh, hell, yes. He paid them more
10:39:17 20 than I would have ever paid them.

10:39:18 21 Q. Okay. So when he made his tax
10:39:20 22 filings and did his annual tax returns, would
10:39:23 23 there be a sheet that would be a part of his
10:39:28 24 tax returns or his records that would have all
10:39:30 25 the overage names on it that were used to, you

10:39:35 1 know, to justify the revenue? There would be
10:39:39 2 some document, correct?

10:39:40 3 A. No, he never used it in his
10:39:42 4 document return. He used it on -- on -- where
10:39:45 5 he listed all of his leases, you know, his
10:39:47 6 buildings that were leased and everything. He
10:39:49 7 leased it with those and the percentage
10:39:51 8 increase. And he had the sheet that Alcine had
10:39:53 9 given him for each company, but he didn't list
10:39:56 10 it as individual companies. He listed it as
10:40:07 11 South Dayton Dump. In other words, when they
10:40:08 12 went over what their monthly fees was, that's
10:40:10 13 when he got it. Alcine presented those lists
10:40:14 14 to them, the ones that went over every quarter.
10:40:17 15 But he never -- all I had seen was the list
10:40:22 16 that Alcine had given him, he says well, this
10:40:25 17 was this company, and it was just -- but he had
10:40:29 18 some pretty good stacks on just his regular
10:40:32 19 leases.

10:40:33 20 Q. What did you do then? Did you add
10:40:35 21 up the dollar figure so that your father could
10:40:38 22 declare that as income?

10:40:39 23 A. I'd run his adding machine. He
10:40:43 24 had one of those big old adding machines. He'd
10:40:46 25 give me the figure and I'd put it in the adding

10:40:50 1 machine and I'd give him the little roll off of
10:40:52 2 it, you know. He called it out to me and I
10:40:53 3 just -- he just really called the dollar
10:40:55 4 figures out to me.

10:40:56 5 Q. Do you have custody of your
10:41:00 6 father's old files, including maybe his old tax
10:41:03 7 returns?

10:41:03 8 A. They're gone. I don't know what
10:41:05 9 happened to them. I -- we looked --
10:41:11 10 Mrs. Grillo had a place in her storage at her
10:41:14 11 condo. We looked down there a couple years
10:41:18 12 ago. I don't know, Jim Keifer was after my
10:41:20 13 uncles died and everything. They really didn't
10:41:23 14 take care -- after he died, Cyril had an
10:41:26 15 attorney by the name of Jim Keifer, and he --
10:41:30 16 but his files -- I never found anything in his
10:41:31 17 files. I don't know. And my dad kept good
10:41:34 18 files, but I don't know what he -- when I --
10:41:37 19 when I left over there, I left. I mean, you
10:41:42 20 know --

10:41:42 21 Q. Did your father use an accountant
10:41:45 22 to --

10:41:46 23 A. Yes. It was Ed Hence.

10:41:49 24 Q. Hence?

10:41:50 25 A. Hence. And he's deceased. But

10:41:56 1 Dix --

10:41:56 2 Q. How do you spell Hence?

10:41:57 3 A. H E N C E.

10:41:59 4 Q. Is he still alive?

10:42:01 5 A. No. He'd dead. He was on South
10:42:03 6 Main Street.

10:42:03 7 Q. Does he -- does his office still
10:42:06 8 exist?

10:42:06 9 A. There's a man that handles it.
10:42:10 10 It's one of the Dixes, D I X, and he's down off
10:42:15 11 of -- off of northbound Dixie about -- just
10:42:20 12 about -- below Dorothy Lane there. There's
10:42:22 13 some white buildings, office buildings there on
10:42:25 14 the right, and he's in one of those.

10:42:27 15 Q. Is this a person by the name of
10:42:30 16 Dix?

10:42:30 17 A. Yes.

10:42:30 18 Q. How do you spell that, please?

10:42:31 19 A. D I X.

10:42:33 20 Q. And would that person possibly
10:42:35 21 still have Ed Hence's old files?

10:42:39 22 A. Might have Ed Hence's files, yes,
10:42:42 23 because he's still doing Margaret and my
10:42:47 24 stepmother's tax returns.

10:42:49 25 Q. Are you familiar with the dump

10:42:54 1 tickets that were filled out by regular
10:42:59 2 customers?

10:42:59 3 A. (Witness shakes head back and
10:43:00 4 forth.)

10:43:00 5 Q. You're not. So you've never seen
10:43:02 6 a dump ticket?

10:43:02 7 A. No, I never seen a dump ticket.
10:43:03 8 It was always cash and carry all I saw, except
10:43:06 9 for the account customers, you know.

10:43:07 10 Q. Okay. Well, how was the -- wasn't
10:43:10 11 the dump ticket used for the account customers?

10:43:13 12 A. I don't know how it was used. I
10:43:15 13 didn't know anything about Alcine's accounting.
10:43:18 14 All I -- and really, how I got those names that
10:43:21 15 I had was -- knew of was through that overage
10:43:25 16 mostly. But I knew that they had accounts
10:43:28 17 because Cyril was always talking about it.

10:43:30 18 Q. With respect to Peerless
10:43:36 19 Transportation, I just want to clarify a couple
10:43:38 20 of things there. Isn't it -- did you testify
10:43:40 21 that the only time you ever saw any Peerless
10:43:44 22 Transportation trucks was somewhere between
10:43:46 23 1960 and 1964, correct?

10:43:49 24 A. Yes, sir.

10:43:49 25 Q. And you had no knowledge of what

10:43:51 1 was in the trucks, correct?

10:43:53 2 A. No.

10:43:53 3 Q. And you don't know who Peerless
10:43:55 4 was hauling for in those trucks, correct?

10:43:59 5 A. No.

10:44:00 6 Q. Did your father own the land on
10:44:08 7 which the UD basketball arena sits today?

10:44:12 8 A. No. I made a sale. I traded the
10:44:15 9 conservancy twenty acres down on the Grillot
10:44:19 10 and Boesch ground down there where the gravel
10:44:23 11 pit that has the lake on it now is on the south
10:44:25 12 end of this property. I traded that to the
10:44:28 13 conservancy for four and a half acres where the
10:44:31 14 UD ground sits. Where the UD arena sits now.
10:44:35 15 I made that deal. I had it sold for three
10:44:39 16 fifty. And here Father Resch and Brother
10:44:41 17 Lockner and Elwood Zimmer, and Solvary was with
10:44:44 18 me. And he says there goes your commission.
10:44:47 19 And he was right. They took the three hundred
10:44:49 20 and fifty thousand dollar tax deduction.

10:44:51 21 Q. So at one time you owned the land
10:44:54 22 on which the UD basketball arena sits today?

10:44:56 23 A. Yeah. We did take title to it.
10:44:58 24 We traded the conservancy for that land. That
10:45:01 25 was all conservancy ground over there. Like

10:45:02 1 the high school stadium is on a
10:45:05 2 ninety-nine-year lease. The conservancy was
10:45:09 3 always afraid to sell that land over there for
10:45:11 4 years because they think they got it under
10:45:14 5 false pretenses.

10:45:15 6 There was a story, and I'll tell it
10:45:17 7 to you if you want to hear it. Colonel Deeds, who
10:45:21 8 was president of NCR, sat in his office and looked
10:45:24 9 across the river there. And there was a bunch of
10:45:27 10 shacks. It was tin town. And it offended his
10:45:30 11 view. So he was on the conservancy board, and he
10:45:32 12 got them to condemn that ground. They said they
10:45:35 13 might have to dredge the river someday and they
10:45:38 14 had to put the off-ball someplace and it was low
10:45:39 15 over there so they could put it over there. So
10:45:42 16 they condemned all that, bought it all up, you
10:45:44 17 know. Well, then the conservancy was afraid to
10:45:48 18 sell it. Like I said, the high school stadium is
10:45:50 19 on a ninety-nine-year lease. And they wouldn't
10:45:52 20 sell. But I knew Max Mitchell who's head of the
10:45:55 21 conservancy, and I worked a trade out with twenty
10:45:58 22 acres down the river where they had some ground
10:46:00 23 south of this Grillot and Boesch ground. I worked
10:46:03 24 a trade out for four and a half years for the
10:46:05 25 arena, and I had it sold to UD for three hundred

10:46:08 1 and fifty thousand dollars. Well, then my dad and
10:46:10 2 his partner, well, Cyril finally figured out the
10:46:13 3 tax write-off they could get for that so they gave
10:46:14 4 it to UD.

10:46:14 5 Q. Okay.

10:46:17 6 A. So out of all my work, I got to
10:46:20 7 pick out two seats.

10:46:22 8 Q. So it was your father and Cyril
10:46:32 9 Grillot who donated the property to the
10:46:35 10 University of Dayton on which the basketball
10:46:38 11 arena sits down, correct?

10:46:39 12 A. Yes. That's correct.

10:46:40 13 Q. Do you know if there is a memorial
10:46:45 14 plaque in the arena that has your dad's name on
10:46:48 15 it?

10:46:48 16 A. Yeah. There's a memorial plaque
10:46:51 17 someplace. It had my dad and Cyril's name on
10:46:54 18 it. I don't know. It might be up in the --
10:46:56 19 what's the Boesch lounge today. He never
10:46:58 20 wanted his name attached to it, but then my
10:47:00 21 stepmother gave them the money to redo the
10:47:02 22 arena lounge up there, you know, she donated
10:47:07 23 that money, and so they put her name on it and
10:47:10 24 his. But --

10:47:11 25 Q. Would it surprise you that Ed

10:47:15 1 Grillot would testify that his father's name
10:47:24 2 didn't appear on anything after that donation?

10:47:27 3 A. Well, I think the plaque is still
10:47:30 4 up there in one of the trophy things or
10:47:33 5 something. I wouldn't swear to it. It might
10:47:35 6 still be up in the lounge there. I don't go up
10:47:37 7 there all the time. Once in a while, they give
10:47:40 8 me a free meal up there, but that's about it.

10:47:43 9 Q. All right. I believe you
10:47:57 10 testified earlier this morning that you sold
10:47:59 11 some interest in the dump property or dump
10:48:04 12 operation at some point. Do you remember
10:48:05 13 giving that testimony?

10:48:06 14 A. Yes. Yes. Uh-huh.

10:48:07 15 Q. What interest were you referring
10:48:09 16 to?

10:48:09 17 A. Well, all the dump property over
10:48:12 18 there in this -- the dump property and the
10:48:15 19 buildings and everything, when my father died,
10:48:17 20 in his estate, he left in his will, he left
10:48:20 21 half to his widow and he left half to the four
10:48:23 22 children. Well, my two sisters and my brother
10:48:28 23 sold out to my stepmother Kathy. I was -- my
10:48:34 24 one sister held onto her share for a while, a
10:48:37 25 couple, three years. I don't know. But

10:48:39 1 anyway, I -- I was going to hold onto mine and
10:48:43 2 then Cyril says he wanted to buy it. He wanted
10:48:46 3 to buy my one-sixteenth is what it amounts to.
10:48:51 4 He wanted to buy my one-sixteenth, and I kept
10:48:57 5 arguing with him and I was going through a
10:49:01 6 divorce at the time and I had to divide
10:49:03 7 everything, I had a company and a farm to
10:49:05 8 protect so I sold out to him.

10:49:07 9 Q. When did your father pass away?

10:49:10 10 A. 1979. It was September, I think.

10:49:15 11 Q. Approximately how long after that
10:49:17 12 did you sell your one-sixteenth ownership to
10:49:22 13 Cyril?

10:49:22 14 A. 1980. He owed me a commission on
10:49:27 15 the property on the other side of 75, and he
10:49:30 16 argued about it, he didn't owe it to me, we
10:49:33 17 went back and forth, and so he sweetened the
10:49:36 18 pot and he says I'll pay you that commission,
10:49:39 19 and that commission was about thirty-five
10:49:43 20 thousand dollars. So I said I'll take it.
10:49:45 21 Plus what I got -- what I inherited from my
10:49:47 22 father.

10:49:47 23 Q. Do you remember referring earlier
10:49:48 24 this morning to something called the South
10:49:50 25 Dayton Remediation Trust?

10:49:52 1 A. Yes.

10:49:52 2 Q. What is that?

10:49:55 3 A. The south --

10:50:00 4 MR. HOFFMAN: Give it a try. I can
10:50:02 5 talk to Steve off-line about it. He's not going
10:50:04 6 to give you a real technical answer but go ahead.

10:50:09 7 THE WITNESS: Well, the South Dayton
10:50:11 8 Remediation Trust was formed -- my father was
10:50:15 9 dead. It was formed by Cyril Grillot and Jim
10:50:18 10 Kiefer who was his attorney at the time. And they
10:50:21 11 talked about the liability of this property.
10:50:27 12 Now -- and this is just my laymen's understanding
10:50:30 13 that the liability for Margaret Grillot, Cyril's
10:50:34 14 widow, she had no liability because she inherited
10:50:39 15 after the dump stopped operating, okay? The
10:50:41 16 understanding was that my father's widow, Kathryn
10:50:46 17 Boesch, inherited it while Alcine was still
10:50:48 18 operating that operation of his in the back, you
10:50:51 19 know, so she was liable.

10:50:53 20 So I understand this remediation
10:50:56 21 trust was formed with several of the companies
10:50:59 22 that had dumped there, that they would relieve the
10:51:02 23 ladies of liability for a half a million dollars.
10:51:06 24 Now, they've been paid two hundred thousand, we've
10:51:11 25 got three hundred thousand into it. Mark Fornes

10:51:13 1 and myself are the trustees for that, plus Mark
10:51:18 2 manages the property, Fornes Realty.

10:51:19 3 Q. Who are the companies that are
10:51:21 4 also part of this trust?

10:51:22 5 A. I don't know. I never formed it.
10:51:26 6 I don't -- I don't know a thing about it.

10:51:29 7 Q. Was this trust formed because a
10:51:33 8 claim was asserted against your father's estate
10:51:38 9 and --

10:51:39 10 A. No.

10:51:39 11 Q. -- Mr. Grillot's estate?

10:51:41 12 A. There was no claim against my
10:51:44 13 father's estate, no. It was formed afterwards.

10:51:47 14 Q. Okay. Are you a beneficiary of
10:51:51 15 that trust or just trustee?

10:51:52 16 A. I'm just a trustee of it. I don't
10:51:55 17 know whether I'm a beneficiary or not. If --
10:51:57 18 well, there's twenty-five acres in there where
10:52:00 19 all the foliage is and everything that my
10:52:05 20 stepmother in a will left her share of that
10:52:07 21 back to the trust. Now, Margaret Grillot owns
10:52:11 22 the other. She owns what -- what she's own --
10:52:16 23 nine-sixteenths and my sisters and I own
10:52:22 24 seven-sixteenths of the land. But the trust
10:52:25 25 is -- has some of the land there.

10:52:27 1 Q. Okay. I thought you had testified
10:52:31 2 earlier that you sold your interest in the land
10:52:34 3 in --

10:52:34 4 A. That's the first time. That's
10:52:36 5 when my father died. That's when my father
10:52:40 6 died in 1980. So just this year we
10:52:43 7 re-inherited my stepmother's part.

10:52:50 8 MR. HOFFMAN: I don't want to
10:52:51 9 interrupt, but you and I might want to talk
10:52:54 10 off-line. I can tell you all about that.

10:52:56 11 Q. So was this trust formed at least
10:52:59 12 in part to resolve any claims against the
10:53:02 13 estates?

10:53:03 14 A. That's my understanding to the
10:53:04 15 best of my ability. All I know is what --
10:53:09 16 what -- of course, Cyril is deceased and Keifer
10:53:11 17 is deceased and Kiefer's partner, Jim Mitchell,
10:53:16 18 who's a title man, he told me that that's why
10:53:19 19 it was formed. All I know is what they told
10:53:22 20 me. I was no part of it until after I was
10:53:26 21 appointed trustee after Keifer died. I tried
10:53:33 22 to steer clear, but I got --

10:53:38 23 Q. Has a claim of liability ever been
10:53:40 24 asserted against you personally for the cleanup
10:53:43 25 of this site?

10:53:44 1 A. No, sir.

10:53:51 2 MR. HAUGHEY: I'd like to go off the
10:53:52 3 record. Can you mark these documents.

10:53:52 4 (Thereupon, Boesch Exhibit Number 2
10:54:44 5 was marked for purposes of identification.)

10:54:44 6 (Thereupon, Boesch Exhibit Number 3
10:54:45 7 was marked for purposes of identification.)

10:54:45 8 Q. Jack, I've handed you two
10:55:02 9 exhibits. The first one is marked as Boesch
10:55:11 10 Exhibit 2.

10:55:14 11 A. 2. Yes, sir.

10:55:14 12 Q. The other one, the thicker one is
10:55:20 13 Boesch Exhibit Number 3. Can you just look at
10:55:24 14 those two documents and let me know if you
10:55:27 15 recognize what -- and tell us what they are,
10:55:31 16 please?

10:55:31 17 A. They are records of the testimony
10:55:33 18 that I had given two prior times.

10:55:36 19 Q. Okay. Is Exhibit 2 the deposition
10:55:38 20 you gave in 2006?

10:55:40 21 A. That's it.

10:55:44 22 Q. And Exhibit 3 the deposition you
10:55:46 23 gave in 2011?

10:55:48 24 A. Yes, sir.

10:55:48 25 Q. Okay. Thank you. Did you have an

10:55:53 1 opportunity to review the depositions before
10:55:55 2 your testimony here today?

10:55:56 3 A. I've got copies of them. Yes,
10:56:01 4 sir.

10:56:02 5 Q. Did you have an opportunity to
10:56:03 6 review them again?

10:56:04 7 A. Yes.

10:56:04 8 Q. To the best of your knowledge and
10:56:07 9 recollection and belief, is the testimony that
10:56:09 10 you gave in those two earlier depositions still
10:56:14 11 accurate and truthful today?

10:56:15 12 A. Yes, sir.

10:56:16 13 Q. I'm sorry, what was your response?

10:56:18 14 A. Yes, sir.

10:56:19 15 Q. Today is the third deposition
10:56:26 16 you've given with respect to this site,
10:56:26 17 correct?

10:56:28 18 A. Yes, sir.

10:56:29 19 Q. Do the two depositions that you
10:56:37 20 have before you, the two exhibits and today's
10:56:41 21 testimony cover all of the entities that you
10:56:45 22 can remember ever disposing of waste at this
10:56:48 23 site?

10:56:48 24 A. To the best of my knowledge, yes.

10:56:50 25 Q. Do the two depositions before you

10:56:55 1 and today's testimony cover all waste hauling
10:57:00 2 companies that you can remember ever hauling
10:57:02 3 waste to the site?

10:57:03 4 A. To the best of my ability, yes.

10:57:05 5 Q. Do you have a recollection of any
10:57:11 6 other entities disposing of waste at the site
10:57:15 7 who are not mentioned in either of the two
10:57:20 8 depositions or in your testimony today?

10:57:22 9 A. No, sir.

10:57:25 10 MR. HAUGHEY: Thank you. I have no
10:57:26 11 other questions.

10:57:44 12 MR. SILVER: Anyone else?

10:57:51 13 MR. HARBECK: I do. I have several.

10:57:51 14 CROSS-EXAMINATION

10:57:52 15 BY MR. HARBECK:

10:57:52 16 Q. My name is Bill Harbeck. I
10:58:04 17 represent Waste Management of Ohio. I just
10:58:06 18 have several questions for you.

10:58:08 19 A. Yes, sir.

10:58:09 20 MR. HARBECK: Can you mark this as
10:58:10 21 Exhibit 4?

10:58:10 22 (Thereupon, Boesch Exhibit Number 4
10:59:06 23 was marked for purposes of identification.)

10:59:06 24 Q. Mr. Boesch, have you had a chance
10:59:17 25 to look at Exhibit 4?

10:59:18 1 A. Not completely, no, sir.

10:59:20 2 Q. Okay. Go ahead. Tell me when
10:59:22 3 you're finished.

10:59:30 4 (Pause in proceedings.)

11:00:09 5 THE WITNESS: Yes, sir.

11:00:10 6 Q. I have just a couple questions
11:00:11 7 about this exhibit. First of all, at the
11:00:14 8 bottom, next to where your exhibit sticker is,
11:00:18 9 there's a sticker that says PRP Number 1. Do
11:00:22 10 you see that?

11:00:23 11 A. Yes.

11:00:23 12 Q. Is this -- this was marked at your
11:00:27 13 February 28, 2006 deposition as an exhibit.

11:00:32 14 A. Yes, sir.

11:00:32 15 Q. And my question regarding this
11:00:35 16 exhibit is, are the statements -- and this is
11:00:37 17 an affidavit that you had prepared prior to
11:00:39 18 that deposition, correct? Correct?

11:00:42 19 A. Yes.

11:00:42 20 Q. Okay. Are the statements in
11:00:46 21 Exhibit 4 truthful and accurate?

11:00:47 22 A. Yes, sir, to the best of my
11:00:55 23 knowledge.

11:00:55 24 Q. Okay. I think you testified to
11:01:03 25 this at your 2006 deposition. I just want to

11:01:06 1 make sure. Under paragraph 5A, Dayton Steel
11:01:12 2 Foundry, do you see that?

11:01:13 3 A. Yes, sir.

11:01:14 4 Q. That's the same as Dayton-Walther
11:01:18 5 Company?

11:01:18 6 A. Yes.

11:01:18 7 Q. And then paragraph 5B discusses
11:01:21 8 Frigidaire?

11:01:22 9 A. Yes, sir.

11:01:22 10 Q. We talked a little bit about
11:01:23 11 Frigidaire today, right?

11:01:23 12 A. Yes.

11:01:23 13 Q. Frigidaire was one of the
11:01:24 14 companies, a company that you said brought in
11:01:27 15 drums with metal shavings?

11:01:28 16 A. Yes, sir.

11:01:28 17 Q. And during that 2006 deposition,
11:01:31 18 you also testified that there were other
11:01:34 19 companies that brought in drums with metal
11:01:37 20 shavings. Do you remember that? In your 2006
11:01:42 21 deposition.

11:01:43 22 A. Yes, I probably did because Kenny
11:01:47 23 used to gather those when they'd take them off
11:01:50 24 the truck at the dump building and put them in
11:01:54 25 the back there because they didn't dump those

11:01:56 1 into the ground. They would a lot of times
11:01:59 2 ship them right to the scrap iron people, you
11:02:01 3 know.

11:02:01 4 Q. But let me ask it, though. With
11:02:04 5 respect to the Frigidaire metal shavings, you
11:02:07 6 described them coming in and you said that
11:02:09 7 material would be dumped over the bank.

11:02:11 8 Do you see that in paragraph 5B and
11:02:15 9 the two little IIs.

11:02:17 10 A. Well, they probably did dump some
11:02:25 11 over the bank because sometimes Kenny couldn't
11:02:29 12 get to them in time.

11:02:30 13 Q. Okay. My only other question is
11:02:31 14 with respect to any other company that brought
11:02:34 15 in metal shavings in drums, was it the typical
11:02:37 16 practice that sometimes those drums would also
11:02:40 17 be dumped over the side?

11:02:43 18 A. Could have been. Yes, sir.

11:02:44 19 Q. The wood burning machine that you
11:02:50 20 testified a little bit about, as far as you
11:02:52 21 know, was that operated by Alcine Grillot?

11:02:55 22 A. Yes, sir.

11:02:55 23 Q. To your knowledge, did anyone else
11:02:58 24 have anything to do with the operation or
11:03:00 25 ownership of that wood burning machine?

11:03:03 1 A. No, sir. Not to my knowledge
11:03:05 2 because Kenny was dead then when Alcine was
11:03:07 3 running that. That was his brother that had
11:03:10 4 came to work for him.

11:03:11 5 Q. Okay.

11:03:12 6 A. With him.

11:03:13 7 Q. When did the South Dayton Dump
11:03:18 8 cease the dumping operations?

11:03:20 9 A. You know, I was trying to think.
11:03:40 10 Well, it had to be after 1979 because they were
11:03:48 11 still doing some then. But I don't know what
11:03:52 12 amount they were doing then because when my
11:03:57 13 father passed away, Cyril took the tax material
11:04:01 14 and everything down to Ed Hence and I -- after
11:04:05 15 that, I steered clear of it. When I sold out
11:04:09 16 to Cyril in 1980, I never went back.

11:04:13 17 Q. Okay. I just want your
11:04:17 18 understanding. Did the dump then continue
11:04:19 19 throughout the 1980s?

11:04:21 20 A. I don't think it was active then.
11:04:23 21 I really don't because I think -- I think Kenny
11:04:27 22 was dead and Alcine had -- no, because I know
11:04:31 23 my one sister, I remember, that kept her share
11:04:34 24 for several years said that they weren't making
11:04:38 25 the money off -- that the dump used to produce.

11:04:41 1 I said well, what do you expect, they shut it
11:04:45 2 down.

11:04:45 3 Q. This was in the 1980s?

11:04:48 4 A. Yes, sir. But I don't know
11:04:49 5 exactly what time it was in the 1980s. It was
11:04:53 6 very limited during the '80s that I can think
11:04:56 7 of because they were trying to shut it down at
11:04:58 8 the time.

11:04:58 9 Q. Okay. Thank you. The remediation
11:05:04 10 trust that you were testifying about, and you
11:05:06 11 said five hundred thousand dollars was set
11:05:07 12 aside?

11:05:08 13 A. Yes, sir.

11:05:08 14 Q. And what's happened to that money?

11:05:11 15 A. Well, two hundred thousand has
11:05:14 16 been paid to the group that accepted the
11:05:18 17 liability for dumping there, you know.

11:05:20 18 Q. What group is that?

11:05:21 19 A. Well, it's -- what do they call
11:05:25 20 that group? Remediation trust?

11:05:28 21 MR. HOFFMAN: If you don't know, say
11:05:29 22 you don't know.

11:05:30 23 THE WITNESS: Okay. I -- I don't
11:05:35 24 know. Really, I don't know a whole lot about it
11:05:38 25 because I never dealt with them as such. I'm just

11:05:42 1 carrying out the -- what the trust was set up for.
11:05:46 2 I was an after trustee. I wasn't an early trustee
11:05:50 3 in that. And I just became a trustee about two
11:05:54 4 years ago. All I know is they made an agreement
11:05:57 5 to be relieved of liability by some of the
11:06:00 6 companies that dump there and that -- that the
11:06:07 7 ladies paid a half million dollars -- agreed to
11:06:12 8 pay a half a million dollars to be relieved of
11:06:16 9 liability.

11:06:16 10 Now, like I say before, I think
11:06:18 11 Margaret was relieved -- I think, I don't know
11:06:21 12 this -- but she inherited after the dump was
11:06:23 13 closed. My stepmother inherited while the dump
11:06:28 14 was still in some form of operation in 1979. So
11:06:32 15 this was put up by them to relieve them of
11:06:36 16 liability. One was a hundred and two and one is
11:06:37 17 ninety-two. I mean, you know. So we still have
11:06:42 18 in the trust three hundred thousand dollars that
11:06:47 19 is -- that has to be paid to this group when they
11:06:50 20 settle everything, if they ever settle it. I
11:06:53 21 don't know.

11:06:53 22 Q. Is the group that you're talking
11:06:55 23 about the group that's currently undertaking
11:06:58 24 the investigation, the site investigation, at
11:07:01 25 the site?

11:07:01 1 A. Yes, sir.

11:07:01 2 Q. Okay.

11:07:01 3 A. That's correct.

11:07:02 4 Q. Is that the Plaintiffs here, NCR,
11:07:10 5 Hobart, and Dayton-Walther?

11:07:10 6 A. Yes.

11:07:11 7 Q. Is there a written document that
11:07:14 8 reflects this agreement whereby you are
11:07:15 9 paying -- you've paid them two hundred and
11:07:17 10 people got relieved of liability?

11:07:19 11 A. I assume there is someplace along
11:07:21 12 the line.

11:07:22 13 Q. Okay. And it's your understanding
11:07:23 14 that the remaining three hundred thousand that
11:07:25 15 has not yet been paid over to this group
11:07:28 16 ultimately, the obligation is that it will be
11:07:31 17 paid over to the group?

11:07:32 18 A. Yes, sir.

11:07:33 19 Q. And when does that payment take
11:07:35 20 place, as far as you know?

11:07:36 21 A. I don't know when it takes place.
11:07:38 22 I guess we can give it to them and try it to
11:07:42 23 settle it. But --

11:07:42 24 Q. Okay.

11:07:43 25 A. -- there's no date on it, as far

11:07:44 1 as I know.

11:07:45 2 Q. Is that a document -- and I could
11:07:52 3 ask your lawyer this, if you want -- but you
11:07:55 4 could turn over to the rest of us so we can see
11:07:58 5 what it says regarding the relieving of
11:08:01 6 liability and the payment to the group?

11:08:03 7 MR. HARBECK: If you want to talk
11:08:03 8 about his off-line --

11:08:04 9 MR. HOFFMAN: We should have a
11:08:05 10 discussion about that off the record.

11:08:09 11 MR. HARBECK: That's fine. If the
11:08:10 12 Plaintiffs have it, which I assume they do, I
11:08:12 13 would make a request on the record for that
11:08:14 14 document, which I do not believe has been produced
11:08:17 15 today.

11:08:22 16 MR. SILVER: Request acknowledged on
11:08:26 17 the record.

11:08:26 18 Q. Besides this five hundred thousand
11:08:31 19 dollars, part of which has been paid and part
11:08:33 20 of it which will be paid, have there been any
11:08:37 21 other payments made by anybody connected to the
11:08:42 22 ownership or operation of the South Dayton
11:08:45 23 Dump, by the Boeschs, by any of the Grillots,
11:08:47 24 anybody else that has been made to the
11:08:51 25 Plaintiffs or EPA with respect to the potential

11:08:54 1 liability at the South Dayton Dump?

11:08:56 2 A. Not to my knowledge.

11:08:57 3 Q. And did you say now you are back
11:09:01 4 in the saddle? Are you now current owner again
11:09:03 5 of some of the South Dayton Dump area?

11:09:07 6 A. Yes. I own about one-sixteenth
11:09:12 7 and a fraction.

11:09:12 8 Q. And is that as a result of your
11:09:15 9 stepmother dying?

11:09:15 10 A. My stepmother dying. Her will
11:09:18 11 left the properties back to my sisters and I.
11:09:20 12 My sister-in-law, my sisters, and I. The four
11:09:24 13 of us.

11:09:24 14 Q. Okay. So you got rid of your
11:09:26 15 one-sixteenth shared that you inherited from
11:09:30 16 your father back in 1980, you got rid of that,
11:09:31 17 you sold that to Cyril?

11:09:32 18 A. Yes.

11:09:32 19 Q. And now recently you've gotten --

11:09:36 20 A. Gotten it back. Gotten part of it
11:09:39 21 back.

11:09:39 22 Q. So who are -- at this point, who
11:09:41 23 are the other owners of the South Dayton Dump
11:09:46 24 landfill besides yourself?

11:09:48 25 A. Okay. The other owners right now

11:09:52 1 are Margaret Grillot, Cyril's widow, who owns
11:09:56 2 nine-sixteenths, my sister Barbara Wannamacher,
11:10:08 3 W A N N A M A C H E R. Barbara L. Wannamacher.
11:10:19 4 Natalie Boesch. And Paulita, P A U L I T A,
11:10:30 5 Boesch. And myself.

11:10:33 6 Q. And you said you're a
11:10:42 7 one-sixteenth plus a little bit more?

11:10:44 8 A. Well, we got seven-sixteenths. So
11:10:50 9 there's four of us. So we each got
11:10:51 10 one-sixteenth plus a fraction.

11:10:51 11 Q. Okay. So you each own an equal
11:10:55 12 amount of that seven-sixteenths?

11:10:57 13 A. Yes, sir.

11:10:58 14 Q. Did -- and did you say that
11:11:04 15 there's some agreement or deed or understanding
11:11:09 16 in terms of having that ownership interest
11:11:14 17 being transferred to the remediation trust?
11:11:17 18 You said something about that. I didn't quite
11:11:19 19 understand it.

11:11:20 20 A. Well, there's one part of it that
11:11:22 21 was twenty-five acres. The buildings were
11:11:27 22 transferred back to my sister and I. My two
11:11:30 23 sisters and my sister-in-law and I. Okay?
11:11:34 24 That's the seven-sixteenths. There's a
11:11:38 25 twenty-five acre tract where the foliage is in

11:11:42 1 back on that picture that you have that was
11:11:45 2 transferred -- my stepmother left that in her
11:11:48 3 will to the remediation trust with some money
11:11:50 4 to take care of their obligation in the trust.
11:11:57 5 In other words, pay our attorney fees and
11:11:59 6 things like that.

11:11:59 7 Q. And, I'm sorry, your mother left
11:12:07 8 that?

11:12:07 9 A. My stepmother left that. Yeah.

11:12:23 10 MR. HARBECK: Thank you very much.

11:12:25 11 CROSS-EXAMINATION

11:12:25 12 BY MR. ANDREASEN:

11:12:25 13 Q. Mr. Boesch, my name is John
11:12:28 14 Andreassen. I just have a couple questions to
11:12:32 15 possibly try and clarify some things.

11:12:35 16 When did you become a trustee of the
11:12:38 17 remediation trust?

11:12:40 18 A. Oh, it was approximately two years
11:12:43 19 ago, I guess, when Jim Keifer died. He was one
11:12:46 20 of the trustees. He was the attorney for
11:12:51 21 Mr. Grillot and stepmother.

11:12:53 22 Q. I'm sorry. How many trustees are
11:12:55 23 there currently?

11:12:56 24 A. Two.

11:12:56 25 Q. And who's the other trustee

11:12:58 1 besides yourself?

11:13:00 2 A. Mark Fornes. F O R N E S. Mark
11:13:04 3 Fornes, realtor. He manages the properties.
11:13:12 4 And I currently have my license with him.

11:13:15 5 Q. And prior to you and Mr. Fornes,
11:13:26 6 other than Mr. Keifer, who else would have been
11:13:30 7 trustees of the remediation trust?

11:13:33 8 A. To my -- the best of my knowledge,
11:13:36 9 only the three of us.

11:13:37 10 Q. So before -- let me strike that.
11:13:47 11 When you replaced Mr. Keifer as trustee, was
11:13:54 12 Mark Fornes a trustee at that time?

11:13:55 13 A. Yes, sir.

11:13:55 14 Q. Were he and Mr. Keifer the
11:13:58 15 original two trustees?

11:13:59 16 A. Yes, sir. I think. To the best
11:14:02 17 of my knowledge. Like I said, I steered clear
11:14:05 18 of everything until I got it back here.

11:14:08 19 Q. And I apologize if you already
11:14:13 20 stated this. But when was the remediation
11:14:15 21 trust established?

11:14:16 22 A. I really don't know, to be honest
11:14:24 23 with you. I'm trying to think. Because, see,
11:14:26 24 I stayed clear of all that. I don't know.
11:14:33 25 Maybe sometime in the -- I don't know, if it

11:14:39 1 was established when that first testimony, in
11:14:41 2 2006. It may be in the '90s, late '90s
11:14:45 3 someplace, but I couldn't swear to the
11:14:47 4 establishment of that trust.

11:14:48 5 Q. I believe you testified that the
11:14:56 6 original five hundred thousand dollars came
11:15:02 7 from --

11:15:03 8 A. Margaret Grillot and Kathryn
11:15:05 9 Boesch. They were the two owners at the time.

11:15:08 10 Q. And had that money come from
11:15:19 11 operations of the landfill?

11:15:20 12 A. No. No. This was -- they paid
11:15:23 13 individually. They put up two hundred and
11:15:26 14 fifty thousand apiece.

11:15:27 15 Q. Do you know who requested that
11:15:43 16 they make those payments into the remediation
11:15:45 17 trust?

11:15:46 18 A. I think Mr. Keifer was active in
11:15:49 19 setting that up, that remediation trust. He
11:15:52 20 was their attorney at the time, along with -- I
11:16:03 21 said along with Tim. Tim came in afterwards.
11:16:07 22 I don't know. I don't know the dates. I know
11:16:09 23 that Keifer recommended the ladies set up the
11:16:13 24 trust. I think he set it up. I wouldn't swear
11:16:16 25 to it.

11:16:16 1 Q. And just so we have a clear
11:16:27 2 record, besides yourself and Margaret Grillot,
11:16:36 3 the other three women who are part owners of
11:16:40 4 the landfill properties, Barbara Wannamacher,
11:16:43 5 is that your sister?

11:16:45 6 A. My sister. Yes, sir.

11:16:46 7 Q. Natalie Boesch, is that your
11:16:49 8 sister?

11:16:49 9 A. That's my sister-in-law.

11:16:51 10 Q. And then Paulita Boesch would be
11:16:55 11 your other sister?

11:16:56 12 A. That's my sister. Yes.

11:16:58 13 Q. Who holds the funds of the
11:17:08 14 remediation trust?

11:17:09 15 A. The three hundred thousand dollars
11:17:12 16 is deposited with Third -- Third National --
11:17:16 17 well, Key Bank. I get their -- Third, Society,
11:17:22 18 Key. Key Bank. Lisa Orr has that. They're in
11:17:29 19 certificates of deposit.

11:17:30 20 Q. And Key Bank is -- used to be
11:17:37 21 Third National Bank; is that correct?

11:17:39 22 A. Yeah.

11:17:40 23 Q. Was the original five hundred
11:17:42 24 thousand dollars deposited with Third National
11:17:45 25 Bank?

11:17:45 1 A. I don't know. I imagine it was
11:17:51 2 because that's what Grillot and Boesch had used
11:17:54 3 for years. So I imagine it was. I can't swear
11:17:57 4 to it.

11:17:57 5 Q. And, again, just so the record is
11:18:09 6 clear, besides the -- in addition to the
11:18:13 7 original five hundred thousand dollars, the
11:18:19 8 only other asset of the trust is the
11:18:22 9 twenty-five acres that your stepmother gave to
11:18:27 10 the trust?

11:18:27 11 A. Yes. And she -- she left fifty
11:18:32 12 thousand to the trust to operate the trust, pay
11:18:35 13 the legal fees, things like that for the
11:18:39 14 administration.

11:18:39 15 Q. Let me back up then. I want to
11:18:42 16 make sure we're clear on this. Your stepmother
11:18:42 17 --

11:18:49 18 MR. HOFFMAN: Let me interrupt for a
11:18:50 19 second. I don't want to cut you off, but there's
11:18:53 20 a better person to ask those questions. I think
11:18:55 21 you're asking Jack some questions he's really
11:18:59 22 trying to be helpful on, but he doesn't know the
11:19:02 23 answer to. If you want to have a discussion off
11:19:05 24 the record after you're done with Jack, I can
11:19:12 25 explain better.

11:19:13 1 MR. ANDREASEN: I understand.

11:19:14 2 Q. But if you know, your mother paid
11:19:18 3 two hundred and fifty thousand dollars and
11:19:20 4 donated twenty-five acres and paid an
11:19:23 5 additional fifty thousand dollars?

11:19:25 6 A. (Witness nods head up and down.)

11:19:30 7 Q. Would you say yes or no?

11:19:33 8 A. Yes. I'm sorry.

11:19:36 9 MR. ANDREASEN: That's all I have.
11:19:37 10 Thank you very much.

11:19:37 11 CROSS-EXAMINATION

11:19:37 12 BY MS. WRIGHT:

11:19:41 13 Q. Mr. Boesch, my name is Vicki
11:19:43 14 Wright, and I represent Pharmacia, LLC, which
11:19:46 15 is handling the interest of the company you
11:19:48 16 would recall as Monsanto Company.

11:19:51 17 I've got a few questions. I just
11:19:53 18 want to clarify. If you can take a look at
11:19:56 19 Exhibit 4, which is that affidavit that we were
11:20:01 20 just talking about with Mr. Harbeck. It's also
11:20:04 21 marked as PRP 1.

11:20:07 22 A. Yes.

11:20:09 23 Q. If you could, turn to the second
11:20:11 24 page and take a look there. There's a
11:20:14 25 reference to Monsanto.

11:20:30 1 (Thereupon, an off-the-record
11:20:30 2 discussion was had.)

11:20:32 3 Q. Have you had a moment to read
11:20:34 4 that?

11:20:34 5 A. Yes.

11:20:35 6 Q. Okay. Can you also now take a
11:20:37 7 look at what's been marked as Exhibit 2, which
11:20:40 8 is the deposition transcript?

11:20:45 9 A. Yes.

11:20:45 10 Q. Do you see that?

11:20:47 11 A. Yes, I do.

11:20:47 12 Q. If you would do me a favor and
11:20:51 13 turn to page 86 of that transcript, I would
11:20:55 14 appreciate it.

11:20:56 15 A. Yes.

11:20:56 16 Q. If you look about halfway down
11:21:18 17 that page, you'll see an entry from the
11:21:20 18 transcript that has my name next to it and it
11:21:23 19 has me introducing what's called PRP Exhibit 1,
11:21:27 20 which is the affidavit you were just looking
11:21:30 21 at.

11:21:31 22 Can you read -- we can take a break,
11:21:36 23 as long as you need. I'd like for you to reread
11:21:38 24 your testimony, 86 to 87, and then I've got a few
11:21:43 25 questions.

11:21:44 1 (Pause in proceedings.)

11:22:58 2 THE WITNESS: Okay. Yes, ma'am.

11:23:00 3 Q. Thank you. Is it fair to say that
11:23:02 4 you do not have any firsthand knowledge what
11:23:04 5 was contained in any Monsanto trucks that you
11:23:07 6 saw at the South Dayton Dump?

11:23:09 7 A. That is correct.

11:23:11 8 MS. WRIGHT: That's all I have.
11:23:12 9 Thank you.

11:23:26 10 MR. SILVER: Anyone else? I have a
11:23:30 11 couple of follow-ups.

11:23:32 12 MR. HAUGHEY: Can I ask him one so
11:23:34 13 you don't have to follow up twice?

11:23:36 14 MR. SILVER: Sure.

11:23:36 15 FURTHER CROSS-EXAMINATION

11:23:37 16 BY MR. HAUGHEY:

11:23:37 17 Q. Mr. -- Jack, this is Steve Haughey
11:23:41 18 again.

11:23:41 19 Do you know if an attorney or an
11:23:43 20 accountant helped Alcine or Cyril or Kenny do
11:23:49 21 their tax returns?

11:23:51 22 A. I don't know anything about Alcine
11:23:54 23 or Kenny and their tax returns. I do know that
11:24:00 24 Mr. Hence did Grillot and Boesch, and I think
11:24:06 25 he did, but I don't know for sure, but I think

11:24:09 1 he did Cyril's because Mr. Dix, who was his
11:24:11 2 successor, just did Margaret Grillo's the
11:24:13 3 other day. So I just assumed that he did
11:24:16 4 Cyril's, too, because whatever Dad did, Cyril
11:24:19 5 usually went along with. Once in a while
11:24:21 6 they'd get in a --

11:24:22 7 Q. What's Mr. Dix's first name,
11:24:25 8 please?

11:24:25 9 A. That's a good question. If you
11:24:27 10 got a phonebook, I could probably look it up
11:24:29 11 for you. I don't know if they have phone books
11:24:32 12 anymore.

11:24:32 13 Q. His last name is spelled D I X?

11:24:35 14 A. Yes.

11:24:35 15 Q. And can you state again to the
11:24:38 16 best of your knowledge where his office is
11:24:41 17 located?

11:24:41 18 A. Yeah. It's located on northbound
11:24:45 19 South Dixie here in Kettering. Just as you
11:24:50 20 come up the hill before you get to Dorothy Lane
11:24:53 21 in the old shopping center there, Christopher
11:24:54 22 Club, there's some white buildings on the
11:24:57 23 right. I think Grant owns the bigger office
11:25:01 24 building, but this is on the right. There's a
11:25:03 25 white building up there. I'm trying to think

11:25:06 1 of the name of that street. There's about
11:25:07 2 three or four of them when they first came to
11:25:10 3 town, they put them up there. But that was
11:25:12 4 years ago. But he's in one of those buildings.

11:25:17 5 MR. HAUGHEY: Okay. Thank you.
11:25:18 6 That's all I have.

11:25:18 7 THE WITNESS: I know the building
11:25:20 8 because it used to be owned by Dr. O'Leary and I
11:25:24 9 went to O'Leary.

11:25:28 10 MR. SILVER: Is that it, Steve?

11:25:31 11 MR. HAUGHEY: Yes, that's all.

11:25:33 12 MR. SILVER: Thank you.

11:25:33 13 REDIRECT EXAMINATION

11:25:34 14 BY MR. SILVER:

11:25:34 15 Q. Might it be Michael Dix?

11:25:45 16 A. Michael Dix might be it.

11:25:47 17 Q. All right. Just a couple more
11:25:49 18 questions for you, Jack.

11:25:51 19 Focusing on what's been marked as
11:25:55 20 Boesch Exhibit 4 in front of you, it's the
11:25:57 21 affidavit --

11:25:58 22 A. Yes, sir.

11:26:04 23 Q. -- I just wanted to ask you about
11:26:05 24 paragraph two. You mentioned that -- from 1960
11:26:13 25 to 1967, you maintained the real estate office

11:26:16 1 located near the entrance of the site and was
11:26:19 2 at the site approximately five times per week.

11:26:22 3 So that -- is it your recall that you
11:26:27 4 had that office until '67, not '66.

11:26:32 5 A. I'm trying to think what year I
11:26:39 6 bought that building in Bellbrook. I could
11:26:51 7 probably have been there until '67.

11:26:54 8 Q. All right. And then you
11:26:56 9 testified --

11:26:56 10 A. I had the desk there and stuff.
11:26:57 11 But I really didn't -- because I'm pretty sure
11:27:00 12 I bought that building in Bellbrook in '66.
11:27:05 13 And I moved an office and put some agents in
11:27:08 14 down there. And I'd usually go to the
11:27:10 15 Bellbrook one the first thing in the morning,
11:27:13 16 then I'd go over to Moraine in the afternoon.

11:27:15 17 Q. Okay. And that was after you
11:27:17 18 bought Bellbrook?

11:27:18 19 A. Yes, sir.

11:27:18 20 Q. So are you kind of modifying your
11:27:22 21 testimony earlier that you only really was
11:27:27 22 going -- going to Moraine until '64? Do you
11:27:30 23 remember saying that earlier today?

11:27:32 24 A. Well, that's when I -- yes, I -- I
11:27:39 25 would say that this one is probably more

11:27:42 1 accurate when I stop and think about it because
11:27:44 2 I'm not sure what year I bought that building
11:27:47 3 in Bellbrook. That's my biggest problem
11:27:50 4 because I spent part of my time there and part
11:27:52 5 of my time I'd go over to Moraine in the
11:27:54 6 afternoon.

11:27:54 7 Q. Same day, morning and afternoon?

11:27:56 8 A. Yes, sir.

11:27:57 9 Q. So when you say this one is more
11:27:59 10 accurate, you're referring to the affidavit,
11:28:02 11 Boesch Exhibit 4?

11:28:03 12 A. The affidavit. Yes, sir.

11:28:05 13 Q. All right. And then I had a
11:28:07 14 question, you were asked by Mr. Harbeck earlier
11:28:12 15 about the wood burning operation and who owned
11:28:13 16 it and who operated it. Now, I just want to
11:28:19 17 remind -- mention, didn't you testify earlier
11:28:22 18 today that you had only seen the wood burning
11:28:25 19 operation once whether Cyril took you back
11:28:28 20 there?

11:28:29 21 A. That I had seen it, yes. I think
11:28:30 22 that was to the best of my knowledge. I never
11:28:33 23 went back there. I had no reason to go back
11:28:36 24 there. That was way back in the back. And I
11:28:38 25 didn't even know Alcine was still operating it.

11:28:40 1 Q. So your best memory is that you
11:28:43 2 only went back there once?

11:28:44 3 A. Once. Yes, sir.

11:28:45 4 Q. So you really don't have a very
11:28:47 5 good idea of who owned it, do you?

11:28:50 6 MR. HARBECK: Object to the form of
11:28:51 7 the question.

11:28:52 8 Q. You can answer.

11:28:56 9 A. Who owned the operation?

11:28:57 10 Q. The wood burning operation in
11:28:59 11 particular.

11:28:59 12 A. Well, I think that was all
11:29:01 13 Alcine's.

11:29:02 14 Q. But do you really know who owned
11:29:04 15 it?

11:29:05 16 MR. HARBECK: Object.

11:29:06 17 THE WITNESS: We didn't own it.

11:29:07 18 Q. Who's we?

11:29:08 19 A. Grillot and Boesch didn't own it.

11:29:10 20 Q. Could someone other than Alcine
11:29:13 21 have owned it?

11:29:14 22 MR. HARBECK: Object to the form of
11:29:15 23 the question. Calls for speculation.

11:29:17 24 Q. You can answer.

11:29:18 25 A. I don't know. I don't know. I do

11:29:22 1 know -- the only thing I can tell you is I do
11:29:25 2 know that they had a palletizing operation up
11:29:27 3 in the front off of South Broadway down at the
11:29:30 4 end of this picture, that -- it doesn't really
11:29:34 5 show like it did, and the ladies had to clean
11:29:38 6 up -- but next to Cyril's last piece of ground
11:29:41 7 down there coming along the DP&L big
11:29:45 8 right-of-way for their towers that would go
11:29:47 9 across the river there. But I don't -- I don't
11:29:51 10 think that man had any interest in it but maybe
11:29:55 11 he did. I don't know. As far as I know, only
11:29:57 12 Alcine Grillot.

11:29:57 13 Q. Let me ask you this question. Do
11:29:59 14 you know, do you have knowledge of who all the
11:30:02 15 owners were of the wood burning operation that
11:30:05 16 we've been referring to?

11:30:08 17 MR. HARBECK: Objection. Asked and
11:30:08 18 answered.

11:30:09 19 Q. You can answer.

11:30:10 20 MR. HOFFMAN: If you know.

11:30:11 21 Q. If you know. I'm asking if you
11:30:13 22 know of all the owners. Do you have personal
11:30:16 23 knowledge of who all the owners were?

11:30:18 24 A. That's a good question because it
11:30:23 25 could have been part of that twenty acres that

11:30:25 1 went to the conservancy. It was right next to
11:30:28 2 that lake back there. I couldn't swear to it.

11:30:31 3 MR. HOFFMAN: So is your answer I
11:30:32 4 don't know, Jack?

11:30:33 5 THE WITNESS: I don't know.

11:30:34 6 Q. And you don't know who all the
11:30:37 7 operators of the wood burning operation were,
11:30:39 8 you only saw it once?

11:30:41 9 MR. HARBECK: Object to the form of
11:30:41 10 the question.

11:30:41 11 Q. You can go ahead. Go ahead, Jack.

11:30:44 12 A. I don't know. I really don't know
11:30:47 13 who all the operators were. There could have
11:30:49 14 been a thousand of them, as far as I know.

11:30:51 15 MR. SILVER: Thank you. No further
11:30:52 16 questions.

11:30:55 17 MS. KAUFMAN: I have a question on
11:30:56 18 one of the exhibits that was introduced.

11:30:56 19 RECROSS-EXAMINATION

11:30:58 20 BY MS. KAUFMAN:

11:30:58 21 Q. Mr. Boesch, I just have a question
11:31:12 22 about Exhibit Number 4, which is your
11:31:15 23 affidavit. This affidavit states that you
11:31:22 24 regularly observed people coming to dispose of
11:31:25 25 materials at the site and the following

11:31:30 1 companies regularly dumped industrial material
11:31:33 2 at the site. One of the companies that's
11:31:35 3 listed is Harris Sebold.

11:31:37 4 Do you have personal knowledge that
11:31:38 5 they dumped materials at the site?

11:31:40 6 A. Yes, I do. I saw their truck go
11:31:46 7 in.

11:31:46 8 Q. Okay. Do you have any personal
11:31:49 9 knowledge that they dumped foundry cores at the
11:31:53 10 site?

11:31:53 11 A. Not really, to be honest with you.
11:31:56 12 I just had -- the only thing I can say is Kenny
11:32:03 13 said they were one of the companies that dumped
11:32:05 14 foundry cores.

11:32:06 15 Q. So Kenny said that --

11:32:09 16 A. Yes.

11:32:09 17 Q. -- to you?

11:32:10 18 MS. KAUFMAN: Okay. Thank you.

11:32:12 19 MR. SILVER: Anyone else?

11:32:12 20 RECROSS-EXAMINATION

11:32:15 21 BY MR. HAUGHEY:

11:32:15 22 Q. This is Steve Haughey. Has
11:32:21 23 Margaret Grillot been deposed?

11:32:23 24 A. I don't think so. I don't know.

11:32:28 25 Q. How old is she?

11:32:29 1 A. Ninety-two.

11:32:31 2 Q. And her husband again was --

11:32:39 3 A. Cyril J Grillot.

11:32:42 4 Q. Do you know why she has not been
11:32:45 5 deposed to the best of your knowledge?

11:32:45 6 A. To the best of my knowledge, she
11:32:47 7 had no idea of the dump operation. None
11:32:52 8 whatsoever.

11:32:52 9 Q. Do you know if she has any records
11:32:59 10 of her husband's that were related to the
11:33:02 11 landfill?

11:33:03 12 A. No. We looked in a -- she lives
11:33:08 13 in Indian Creek down there in a condominium,
11:33:12 14 and we looked in her storage shed for records
11:33:16 15 about a year ago. We couldn't find a thing.
11:33:18 16 There was nothing there pertaining to any of
11:33:20 17 that business. I don't think Cyril kept any
11:33:23 18 personally. I think they were all part of what
11:33:25 19 he and Dad had at the office. Dad had the
11:33:28 20 records, and I don't know what happened to
11:33:29 21 them.

11:33:31 22 MR. HAUGHEY: Okay. Thank you.

11:33:36 23 MR. SILVER: Are we done?

11:33:36 24 MR. CAMPBELL: One question.

11:33:36 25 CROSS-EXAMINATION

11:33:41 1 BY MR. CAMPBELL:

11:33:41 2 Q. Mr. Boesch, looking at this
11:33:43 3 Exhibit 4, if there's a disagreement between
11:33:45 4 this affidavit and the testimony you've given
11:33:48 5 today, would you say that the affidavit would
11:33:50 6 be a more accurate source of information for us
11:33:53 7 to rely on?

11:33:54 8 A. Well, probably because this
11:33:55 9 affidavit was given -- what was the date on
11:33:58 10 that? In 2005. And my memory was probably
11:34:05 11 better then than it is now.

11:34:07 12 Q. Was it better in 2005 than it was
11:34:11 13 in 2011?

11:34:12 14 A. Probably. I would say on the
11:34:15 15 average.

11:34:18 16 MR. CAMPBELL: That's all I have.

11:34:19 17 THE WITNESS: With three different
11:34:20 18 testimonies, you know.

11:34:22 19 MR. CAMPBELL: That's all I have.
11:34:23 20 Thank you.

11:34:24 21 THE WITNESS: Yes, sir.

11:34:26 22 MR. SILVER: Okay. I think that
11:34:28 23 concludes -- oh, on the phone, anyone that wants
11:34:32 24 to ask a question on the phone?

11:34:37 25 All right. I believe that concludes

11:34:39 1 the deposition. Jack, thank you very much.

11:34:48 2 (Thereupon, an off-the-record

11:34:48 3 discussion was had.)

11:35:06 4 MR. HOFFMAN: He'll read it.

11:35:07 5 (Thereupon, the deposition was

11:35:09 6 concluded at 11:35 a.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I, HORACE J. BOESCH, JR., do hereby
2 certify that the foregoing is a true and accurate
3 transcription of my testimony.

4

5

6

=====

7

11:35:09

8

Dated =====

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF OHIO)

2 COUNTY OF MONTGOMERY) SS: CERTIFICATE

3 I, Michelle A. Elam, a Notary
4 Public within and for the State of Ohio, duly
5 commissioned and qualified,

6 DO HEREBY CERTIFY that the
7 above-named HORACE J. BOESCH, JR., was by me first
8 duly sworn to testify the truth, the whole truth
9 and nothing but the truth.

10 Said testimony was reduced to
11 writing by me stenographically in the presence
12 of the witness and thereafter reduced to
13 typewriting.

14 I FURTHER CERTIFY that I am not a
15 relative or Attorney of either party, in any
16 manner interested in the event of this action,
17 nor am I, or the court reporting firm with which
18 I am affiliated, under a contract as defined in
19 Civil Rule 28(D).

20

21

22

23

24

25

MICHELLE A. ELAM
NOTARY PUBLIC, STATE OF OHIO
My commission expires 5-2-2015